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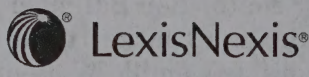

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TITLE 23

PUBLIC UTILITIES AND REGULATED INDUSTRIES

(CHAPTERS 1-29 IN VOLUME 22; CHAPTERS 60-73 IN VOLUME 23B; CHAPTERS 74-87 IN VOLUME 24A; CHAPTERS 88-117 IN VOLUME 24B)

SUBTITLE 2. FINANCIAL INSTITUTIONS AND SECURITIES

CHAPTER.

SUBTITLE 2. FINANCIAL INSTITUTIONS AND SECURITIES

CHAPTER 32

GENERAL PROVISIONS

SUBCHAPTER.

Subchapter 2 — Powers and Duties of Financial Institutions Generally

SECTION.

23-32-202. [Repealed.]

Publisher's Notes. This section, concerning investment in and loans to capital development companies, was repealed by Acts 2017, No. 426, § 10. The section was derived from Acts 1997, No. 82, § 1; 2003, No. 860, § 11.

23-32-207. Deposits and withdrawals — Accounts and certificates of deposit in two or more names.

RESEARCH REFERENCES

Ark. L. Rev. Isabelle V. Taylor, Comment: Creditor Rights and the Missing Link in the Arkansas Trust Code: Is Death Strong Enough "To Break the Chain?", 65 Ark. L. Rev. 433 (2012).

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SUBCHAPTER 1 — GENERAL PROVISIONS

23-35-104. Insurance of accounts.

RESEARCH REFERENCES

ALR. Construction and Application of Federal Credit Union Act of 1934 (FCUA) (12 U.S.C. §§ 1751 to 1795k). 89 A.L.R. Fed. 2d 357 (2014).

SUBCHAPTER 2 — SUPERVISION

SECTION.
23-35-201. Credit Union Division — State Credit Union Supervisor — Staff.
23-35-202. Authority of State Credit Union Supervisor — Rules and regulations.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through

6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

23-35-201. Credit Union Division — State Credit Union Supervisor — Staff.

There is created under the State Securities Department a Credit Union Division which shall be administered by the State Credit Union Supervisor. The Securities Commissioner, in consultation with the Secretary of the Department of Commerce, shall act as State Credit Union Supervisor. The supervisor, in consultation with the Secretary of the Department of Commerce, shall appoint such administrative assistants and examiners as may be necessary to assist in the performance of his or her duties under this chapter.

History. Acts 1971, No. 132, § 41; 1985, No. 936, § 20; A.S.A. 1947, § 67-941; Acts 2019, No. 910, § 571.

Amendments. The 2019 amendment inserted "in consultation with the Secretary of the Department of Commerce" twice; and substituted "administrative assistants" for "assistants, secretaries" in the second sentence.

23-35-202. Authority of State Credit Union Supervisor — Rules and regulations.

(a) All state-chartered credit unions shall be supervised and regulated by the State Credit Union Supervisor acting pursuant to the authority delegated by this chapter. The supervisor shall be responsible for the enforcement of this chapter and the credit union bylaws, and he or she shall have the authority to adopt rules governing credit unions in a manner consistent with this chapter and other statutes of Arkansas.

(b) The supervisor may, irrespective of any limitations in this chapter and subject to other Arkansas law, make reasonable rules authorizing a credit union to exercise any of the powers conferred upon a federally chartered credit union doing business in this state which is subject to the regulations of the National Credit Union Administration, if the supervisor finds that the exercise of the power:

(1) Serves the public convenience and advantage; and

(2) Equalizes and maintains the quality of competition between state-chartered credit unions and federally chartered credit unions. This includes, but it is not limited to:

(A) The offering of the various types of accounts offered by federal credit unions;

(B) Designation of the legal relationships of an account holder;

(C) Adoption of any dividend paying date or other procedure or practice of paying dividends;

(D) Adoption of any business practice, procedure, method, or system authorized for federal credit unions; and

(E) The making of any loan or investment that a federal credit union doing business in this state is authorized to make.

History. Acts 1971, No. 132, § 40; 1979, No. 85, § 1; A.S.A. 1947, § 67-940; Acts 2019, No. 315, § 2486.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the second sentence of (a).

Subchapter 3 — Organization

SECTION.

23-35-301. Procedure for obtaining charter.

(a) Any seven (7) or more residents of the State of Arkansas, of legal age, who have a common bond referred to in § 23-35-401 may organize a credit union and become charter members thereof by:

(1) Executing duplicate copies of the articles of incorporation, which shall state:

(A) The name, which shall include the words "credit union" and which shall be different from the name of any other existing credit union, and the town or city wherein the proposed credit union is to have its principal place of business;

(B) The term of existence of the credit union, which shall be perpetual;

(C) The par value of the shares of the credit union, which shall be in one (1) class of five-dollar multiples of not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00);

(D) The names and addresses of the subscribers to the articles of incorporation, and the number of shares subscribed by each; and

(E) That the credit union shall have the power to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated;

(2) Preparing and adopting duplicate copies of bylaws for the general government of the credit union, consistent with the provisions of this chapter; and

(3) Forwarding the required charter fee, the articles of incorporation, and the bylaws to the State Credit Union Supervisor.

(b)(1) The supervisor shall have the authority to investigate the application for charter to determine whether the proposed credit union meets the objectives of this chapter.

(2) The determination for the approval of the application for charter shall be under such rules as shall be adopted by the supervisor. These rules shall give account to the number of potential members, their stability of employment or membership in the association comprising the common bond of membership, and the economic characteristics of the proposed common bond.

(3) If the supervisor determines that the proposed credit union does not meet these objectives, the charter application shall be denied. If the fee, articles of incorporation, and bylaws conform to the statute, he or she shall issue a certificate of approval of the articles and return a copy

of the bylaws and the articles to the applicant, which shall be preserved in the permanent files of the credit union.

(c) The determination for the approval of the application for charter of a central credit union shall be made by the supervisor after an investigation as to the need for the credit union and upon satisfying himself or herself that the objectives of this chapter are met.

(d) The subscribers for a credit union charter shall not transact any business until formal approval of the charter has been received.

(e) In order to simplify the organization of credit unions, the supervisor shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance.

(f) The minimum paid-in capital with which a credit union may begin business shall not be less than five thousand dollars ($5,000).

(g) The supervisor shall determine that a firm commitment to insure share and deposit accounts has been issued under the provisions of Title II of the Federal Credit Union Act before a charter application can be issued.

History. Acts 1971, No. 132, § 2; 1975, No. 530, §§ 1, 2; 1985, No. 936, § 1; A.S.A. 1947, § 67-902; Acts 2019, No. 315, § 2487.

Amendments. The 2019 amendment deleted "and regulations" following "rules" twice in (b)(2).

RESEARCH REFERENCES

ALR. Construction and Application of Federal Credit Union Act of 1934 (FCUA) (12 U.S.C. §§ 1751 to 1795k). 89 A.L.R. Fed. 2d 357 (2014).

23-35-304. Duties of board of directors.

RESEARCH REFERENCES

ALR. Construction and Application of Federal Credit Union Act of 1934 (FCUA) (12 U.S.C. §§ 1751 to 1795k). 89 A.L.R. Fed. 2d 357 (2014).

Subchapter 6 — Operation

23-35-602. Christmas and other thrift clubs.

Christmas clubs, vacation clubs, and other thrift clubs, if provided for the use of members, shall be operated in accordance with such rules as the board of directors of the credit union may prescribe.

History. Acts 1971, No. 132, § 20; A.S.A. 1947, § 67-920; Acts 2019, No. 315, § 2488.

Amendments. The 2019 amendment deleted "and regulations" following "rules".

23-35-605. Reserves.

(a) At the end of each accounting period, the gross income shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in rules prescribed under this chapter, sums in accordance with the following schedule:

(1) A credit union in operation for more than four (4) years and having assets of five hundred thousand dollars ($500,000) or more shall set aside:

(A) Ten percent (10%) of gross income until the regular reserve shall equal four percent (4%) of the total of outstanding loans and risk assets; then

(B) Five percent (5%) of gross income until the regular reserve shall equal six percent (6%) of the total of outstanding loans and risk assets;

(2) A credit union in operation less than four (4) years or having assets of less than five hundred thousand dollars ($500,000) shall set aside ten percent (10%) of gross income until the regular reserve shall equal seven and one-half percent (7½%) of the total of outstanding loans and risk assets; and

(3) Whenever the regular reserve falls below the stated percent of the total of outstanding loans and risk assets, it shall be replenished by regular contributions in such amounts as may be needed to maintain the stated reserve goals.

(b) The State Credit Union Supervisor may decrease the reserve requirement set forth in subsection (a) of this section when, in his or her opinion, a decrease is necessary or desirable. The supervisor may also require special reserves to protect the interests of members either by rule or for an individual credit union in any special case.

(c) The reserve fund shall belong to the credit union and shall be used to meet all losses from uncollectable loans and shall not be distributed except on liquidation of the credit union or in accordance with a plan approved or ordered by the supervisor.

History. Acts 1971, No. 132, § 26; 1979, No. 206, § 7; 1985, No. 936, § 15; A.S.A. 1947, § 67-926; Acts 2019, No. 315, § 2489.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the introductory language of (a); and substituted "rule" for "regulation" in (b).

23-35-607. Dividends — Definition.

(a) At such intervals as the board of directors of the credit union may authorize and after provision for required reserves, the board may declare, pursuant to such rules as may be issued by the State Credit Union Supervisor, a dividend to be paid at different rates on different types of shares and at different rates and maturity dates in the case of share certificates.

(b)(1) Dividend credit may be accrued on various types of shares and share certificates as authorized by the board.

(2) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first fifteen (15) days of that month.

(3) No dividends shall be paid on shares which are withdrawn during the dividend period.

(c)(1) No dividend shall be declared or paid at a time when the credit union is insolvent or when the payments thereof would render the credit union insolvent.

(2) Insolvency shall be determined by the supervisor to have occurred when:

(A) A credit union cannot meet its obligations as they come due in the normal course of business; or

(B) Considering the credit union's assets and liabilities, the net recoverable assets, if made immediately available, would not be sufficient to discharge the credit union's obligations to its creditors and members.

(3) As used in this subsection, "net recoverable assets" means all assets of the credit union as reflected in a balance sheet which has been prepared using generally accepted accounting principles less the following:

(A) Any uncollectible or unrecoverable asset;

(B) Ten percent (10%) of the unpaid balances of all loans delinquent more than two (2) months but less than six (6) months, twenty-five percent (25%) of the unpaid balances of all loans delinquent from six (6) months to less than twelve (12) months, eighty percent (80%) of the unpaid balances of loans delinquent twelve (12) months but less than sixteen (16) months, and one hundred percent (100%) of the unpaid balances of all loans delinquent sixteen (16) months or more.

(d) Each individual who has met the requirements for membership shall be entitled to, and paid, a dividend on his or her fully paid shares as declared by the board.

History. Acts 1971, No. 132, § 27; 1975, No. 530, § 17; 1979, No. 206, § 8; 1985, No. 936, §§ 16-18; A.S.A. 1947, § 67-927; Acts 2019, No. 315, § 2490.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a).

Subchapter 7 — Merger, Conversion, or Dissolution

SECTION.
23-35-702. Conversion to or from federal credit union.

23-35-702. Conversion to or from federal credit union.

The State Credit Union Supervisor shall issue rules to permit the conversion of a credit union operating under this chapter to a federal credit union and the conversion of a federal credit union to a credit union operating under this chapter.

History. Acts 1971, No. 132, § 36; A.S.A. 1947, § 67-936; Acts 2019, No. 315, § 2491.

Amendments. The 2019 amendment substituted "rules" for "regulations".

Subchapter 8 — Prohibited Practices

SECTION.
23-35-805. [Repealed.]

23-35-801. Misleading conduct or use of words "credit union".

RESEARCH REFERENCES

ALR. Construction and Application of Federal Credit Union Act of 1934 (FCUA) (12 U.S.C. §§ 1751 to 1795k). 89 A.L.R. Fed. 2d 357 (2014).

23-35-805. [Repealed.]

Publisher's Notes. This section, concerning false reports about credit union, was repealed by Acts 2019, No. 252, § 1, effective July 24, 2019. The section was derived from Acts 1971, No. 132, § 34; A.S.A. 1947, § 67-934.

CHAPTER 36

INDUSTRIAL LOAN INSTITUTIONS

SECTION.
23-36-105. Supervision by Bank Commissioner.
23-36-110. Loans insured by federal government.

23-36-105. Supervision by Bank Commissioner.

(a) Every institution transacting the business of an industrial loan institution as defined by this chapter, whether as a separate business or in connection with any other business, under the laws of and within this state, shall be subject to the provisions of this chapter and shall be under the supervision of the Bank Commissioner.

(b) The commissioner may make, at any time and from time to time, any examinations of the affairs of securities affiliates or other affiliates of industrial loan institutions which are necessary to disclose fully the relations between the industrial loan institutions and their affiliates and the effect of the rules promulgated by the commissioner on the affairs of the industrial loan institutions.

(c) The commissioner shall exercise control of and supervision over industrial loan institutions doing business under this chapter. It shall be his or her duty to execute and enforce, through the state bank examiners and any other agents appointed for that purpose, all laws relating to industrial loan institutions as defined by this chapter.

(d) For the more complete and thorough enforcement of the provisions of this chapter, the commissioner is empowered to promulgate any rules and instructions, not inconsistent with this chapter, which may, in his or her opinion, be necessary to carry out the provisions of the laws

relating to industrial loan institutions as defined in § 23-36-101 and which may be further necessary to ensure safe and conservative management of industrial loan institutions under his or her supervision to provide adequate protection for the interest of creditors, depositors, and stockholders in their relations with the institutions.

(e) All industrial loan institutions doing business under the provisions of this chapter shall conduct their business in a manner consistent with all laws relating to industrial loan institutions and all rules and instructions that may be promulgated or issued by the commissioner.

History. Acts 1941, No. 111, § 8; A.S.A. 1947, § 67-1008; Acts 2019, No. 315, § 2492.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b); and deleted "regulations" following "rules" in (d) and (e).

23-36-110. Loans insured by federal government.

(a) Subject to any rules which the Bank Commissioner finds to be necessary and proper, industrial loan institutions are authorized:

(1) To make loans and advances of credit and purchases of obligations representing loans and advancement of credit which are insured by the Federal Housing Administrator and to obtain such insurance;

(2) To make any loans secured by mortgages on real property which the administrator insures or makes a commitment to insure and to obtain such insurance; and

(3) To purchase, invest in, and dispose of notes or bonds secured by mortgage or deed of trust which the administrator has insured or made a commitment to insure in debentures issued by the administrator or in securities issued by the national mortgage associations.

(b) No law of this state prescribing the nature, amount, or form of security, or requiring security upon which such loans or advances of credit may be made, or prescribing or limiting the period for which loans or advances of credit may be made shall be deemed to apply to loans and advances of credit, or purchases made pursuant to subsection (a) of this section.

History. Acts 1941, No. 111, § 14; A.S.A. 1947, § 67-1014; Acts 2019, No. 315, § 2493.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the introductory language of (a).

CHAPTER 37

SAVINGS AND LOAN ASSOCIATIONS

SUBCHAPTER.

SUBCHAPTER 1 — GENERAL PROVISIONS

23-37-101. Definitions.

(a) As used in this chapter, unless the context otherwise requires:

(1) "Association" means a corporation carrying on the business of a savings and loan association or a building and loan association under a charter issued by the State of Arkansas;

(2) "Board" means the Savings and Loan Association Board [abolished] duly appointed and acting pursuant to the terms of this chapter;

(3) [Repealed.]

(4) "Federal association" means a savings and loan association incorporated pursuant to the Home Owners' Loan Act of 1933, whose principal business office is located within the territorial limits of this state;

(5) "Foreign association" means an association chartered under the laws of another state or a federal association organized in another state, but does not mean a federal association organized in this state;

(6) "Mutual association" means an association that does not have issued an outstanding permanent capital stock and whose affairs are managed by a board of directors elected by the members;

(7) "Savings account" means that part of the savings liability of an association which is credited to a member by reason of the investment of funds in the association other than permanent capital stock;

(8) "Stock association" means an association that has issued an outstanding permanent capital stock and whose affairs are managed by a board of directors elected by the holders of the permanent capital stock; and

(9) "Supervisor" means the Supervisor of Savings and Loan Associations acting and appointed pursuant to the terms of this chapter.

(b) The board may by rule define other terms used in this chapter and by the savings and loan industry.

History. Acts 1963, No. 227, § 1; 1979, No. 361, § 1; A.S.A. 1947, § 67-1801; Acts 2021, No. 576, § 2.

Amendments. The 2021 amendment repealed (a)(3).

23-37-107. Fees.

The Supervisor of Savings and Loan Associations shall collect in advance, and the person or association so served shall pay, the following fees and charges:

(1) In charter application proceedings:

(A) For filing an application for charter, one thousand five hundred dollars ($1,500);

(B) For filing a protest to an application for charter, one thousand dollars ($1,000) from each protestant; and

(C) For filing a petition for rehearing, seven hundred fifty dollars ($750);

(2) For filing and approval of an amendment to bylaws or articles of incorporation, twenty-five dollars ($25.00);

(3)(A) An annual fee, payable at the time the annual report of the association is filed, equal to:

(i) Two hundred fifty dollars ($250) for each one million dollars ($1,000,000) of assets or fraction thereof, up to two million dollars ($2,000,000);

(ii) One hundred dollars ($100) on each one million dollars ($1,000,000) of assets or fraction thereof, over two million dollars ($2,000,000) and less than five million dollars ($5,000,000); and

(iii) Fifty dollars ($50.00) on each one million dollars ($1,000,000) of assets or fraction thereof, over five million dollars ($5,000,000).

(B) No association chartered under the laws of this state shall be subject to any privilege, occupation, or franchise taxes for transacting business throughout the state.

(C) In no event shall any association pay an annual fee in excess of five thousand dollars ($5,000);

(4) For each extraordinary examination ordered by the Savings and Loan Association Board [abolished], a fee of one hundred dollars ($100) per day for each examiner for each and every day the examiner is absent from the office of the supervisor for the purpose of making the examination. In addition, the person or association shall pay the actual hotel and traveling expenses of the authorized examiner to and from Little Rock;

(5) For filing a petition for conversion and verified minutes evidencing a conversion or plan of merger or consolidation, a fee of two hundred fifty dollars ($250);

(6) For filing a certificate of dissolution, a fee of one hundred dollars ($100);

(7) For filing a copy of a charter of a federal savings and loan association, a fee of fifty dollars ($50.00);

(8) The supervisor is authorized, in his or her discretion, to charge a fee of not exceeding ten dollars ($10.00) upon each application for his or her approval or the approval of the board, as provided by this chapter;

(9) For each certificate of the supervisor authenticating any document or other instrument, a fee of two dollars fifty cents ($2.50), plus two dollars ($2.00) for each page of the document or instrument;

(10) [Repealed.]

(11) For a request for a special meeting of the board, one thousand five hundred dollars ($1,500);

(12) For each examination of an association by an authorized examiner from the office of the supervisor, a fee of fifty dollars ($50.00) per

day for each examiner for each and every day the examiner is absent from the office of the supervisor for the purpose of making the examination. In addition, the person or association shall pay the actual hotel and traveling expenses of the authorized examiner to and from Little Rock;

(13) In branch office or other service facility application proceedings:

(A) For filing an application for a branch office or other service facility, two hundred fifty dollars ($250);

(B) For filing a protest to an application for a branch office or other service facility, five hundred dollars ($500) from each protestant;

(C) Upon the filing of one (1) or more protests, two hundred fifty dollars ($250) from the applicant; and

(D) For filing a petition for rehearing, seven hundred fifty dollars ($750); and

(14) In any proceeding before the board or the supervisor regarding any application, the applicant shall pay all costs of having the proceedings transcribed, and, if the proceedings are transcribed, the applicant shall furnish the original copy of the transcript to the supervisor.

History. Acts 1963, No. 227, § 54; 1975, No. 531, §§ 5-11; 1979, No. 361, § 10; A.S.A. 1947, § 67-1854; Acts 2021, No. 576, § 3.

Amendments. The 2021 amendment repealed (10).

Subchapter 2 — Supervision

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

23-37-206. Division of Savings and Loan Associations — Supervisor — Staff.

(a) There is created a Division of Savings and Loan Associations of the State Securities Department which shall be administered by the Supervisor of Savings and Loan Associations.

(b)(1) The Securities Commissioner, in consultation with the Secretary of the Department of Commerce, shall act as Supervisor of Savings and Loan Associations. He or she may appoint an assistant securities commissioner responsible for financial institutions to act as the Assistant Supervisor of Savings and Loan Associations and perform all duties delegated by the commissioner.

(2) The supervisor, in consultation with the Secretary of the Department of Commerce, shall appoint any other assistants, secretaries, and examiners who may be necessary to assist in the performance of his or her duties under this chapter.

History. Acts 1963, No. 227, § 2; 1979, No. 361, § 2; A.S.A. 1947, § 67-1802; Acts 2019, No. 910, § 572.

Amendments. The 2019 amendment inserted "in consultation with the Secretary of the Department of Commerce" in (b)(1) and (b)(2).

23-37-207. Supervisor's powers and duties generally.

(a) The Supervisor of Savings and Loan Associations shall have general supervision of associations doing business in this state and shall be charged with the execution of the laws of this state relating to those associations.

(b) In order to fulfill his or her responsibilities, the supervisor shall have the following powers, duties, limitations, and functions:

(1) He or she shall have all the rights, powers, and privileges heretofore vested in the Savings and Loan Association Board [abolished] and be subject to all duties to which the Savings and Loan Association Board [abolished] was heretofore subject;

(2) He or she shall, in such coordination with the Federal Home Loan Bank Board [abolished], the Federal Deposit Insurance Corporation, and other federal and state regulatory authorities as he or she deems appropriate, provide for the orderly examination and supervision of associations regulated by this chapter. All federal records, documents, and examinations received by the supervisor are not public unless released by the appropriate federal agency; and

(3) He or she, or any designated assistant, shall hear all applications for charters for new associations, all protested applications for new branches, those matters concerning a protested move of the home office or a branch office, any conversion application by an association, and all other administrative matters under this chapter. Administrative decisions of the supervisor are subject to appeal as set forth in § 23-37-214.

(c)(1) The supervisor, after public hearing, notice of which has been given to every association in the state, shall have power and authority to issue rules governing the operation of associations in a manner

consistent with this chapter and other applicable Arkansas laws. In addition, he or she shall have the power to make and promulgate any forms which are necessary for the administration of this chapter.

(2) These rules may from time to time be amended, modified, or repealed by the Savings and Loan Association Board [abolished] and shall have uniform application to all associations subject to the provisions of this chapter.

(d) Any person affected or who may be affected by an action of the supervisor shall be given the opportunity of appearing and presenting evidence before the supervisor.

History. Acts 1963, No. 227, §§ 2, 12; 1979, No. 361, § 2; A.S.A. 1947, §§ 67-1802, 67-1812; Acts 1997, No. 258, § 5; 2019, No. 315, § 2494.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the first sentence of (c)(1) and in (c)(2).

23-37-208. Supervisor's investigatory powers.

(a) For the purpose of any investigation, examination, inquiry, or proceeding under this chapter, the Supervisor of Savings and Loan Associations or any officer designated by the supervisor may administer oaths and affirmations, subpoena witnesses or documents, compel their attendance, take evidence, and require the production of any books, papers or correspondence, memoranda, agreements, or other documents which the supervisor deems relevant or material to the inquiry or examination.

(b) In case of contumacy or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the supervisor, may issue to the person an order requiring him or her to appear before the supervisor or the officer designated by him or her, there to produce documentary evidence if so ordered or to give evidence concerning the examination, investigation, or inquiry. Failure to obey the order of the court may be punished by the court as a contempt of court.

History. Acts 1963, No. 227, § 49; 1979, No. 361, § 9; A.S.A. 1947, § 67-1849; Acts 2013, No. 1144, § 3.

Subchapter 3 — Organization

SECTION.
23-37-302. Capitalization requirements generally.

23-37-302. Capitalization requirements generally.

The capitalization of a proposed stock or mutual association shall be in accordance with rules established by the Savings and Loan Association Board [abolished]. In establishing its requirements, the board may consider those requirements established by the Federal Savings and

Loan Insurance Corporation [abolished], but its requirements may not be greater than those prescribed by that corporation.

History. Acts 1963, No. 227, § 19; 1979, No. 361, § 6; A.S.A. 1947, § 67-1819; Acts 2019, No. 315, § 2495.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the first sentence.

Subchapter 4 — Operation Generally

SECTION.
23-37-401. Powers commensurate with federal associations.

23-37-401. Powers commensurate with federal associations.

Irrespective of any limitations contained in this chapter, the Supervisor of Savings and Loan Associations may adopt rules authorizing or empowering any association chartered or operating under the provisions of this chapter to:

(1) Pay or give any premium or other concession for the opening or increasing of a savings account to the same extent that the payment of premiums or the granting of other concessions may be authorized for a federal association doing business in this state;

(2) Designate the legal relationship between the association and the holder of a savings account with the association and the name to be given the savings account in any advertising or public description of the savings account to the same extent that those designations and legal relationships are authorized for a federal association doing business in this state;

(3) Adopt any dividend or interest paying date or other procedure or practice with respect to the paying of interest or dividends authorized for a federal association doing business in this state;

(4) Adopt any business practice, procedure, method, or system authorized by a federal association doing business in this state, except nothing herein will permit an extension of a state savings and loan association's branching authority beyond the limitations of state law; and

(5) Make any loan or investment that a federal association doing business in this state is authorized to make.

History. Acts 1963, No. 227, § 58; 1969, No. 242, § 1; A.S.A. 1947, § 67-1858; Acts 1988 (4th Ex. Sess.), No. 2, § 8; 1988 (4th Ex. Sess.), No. 12, § 8; 2001, No. 1553, § 35; 2019, No. 315, § 2496.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the introductory language.

Subchapter 5 — Savings Accounts

SECTION.
23-37-505. Withdrawals generally.

23-37-502. Accounts in the names of two or more persons.

RESEARCH REFERENCES

Ark. L. Rev. Isabelle V. Taylor, Comment: Creditor Rights and the Missing Link in the Arkansas Trust Code: Is Death Strong Enough "To Break the Chain?", 65 Ark. L. Rev. 433 (2012).

23-37-505. Withdrawals generally.

(a) Any savings account holder may, at any time, present a written application for withdrawal of all or any part of his or her savings account except to the extent the account may be pledged to the association or to another person on the books of the association.

(b)(1) An association may pay, in full, each and every withdrawal request as presented, without requiring that written application therefor be made.

(2) At any time the board of directors of an association finds it to be in the best interest of the association, the board may, by proper resolution, require a written notice of not exceeding sixty (60) days before paying withdrawals, in which event no withdrawal request shall be paid until the expiration of the time for giving notice fixed by the board of directors.

(3) Upon the same day the resolution to require notice is made effective, the association shall notify the Supervisor of Savings and Loan Associations by telephone or telegraph that the resolution is in effect.

(c)(1) In the event the Savings and Loan Association Board [abolished] makes an affirmative finding that a period of great financial stress or other emergency exists, either generally or in a specific locality in this state, or for a specific association, it may, with the approval of the Governor, restrict the right of an association to pay withdrawals, to the extent and in the manner which the board finds necessary or desirable for the protection of savings account holders and other creditors of the association.

(2) Any restriction on the withdrawals from an association may, with like approval, be at any time and from time to time extended, renewed, or modified.

(3) Any restriction shall be binding upon any association from the time the order of the board imposing the restriction is served on the affected association.

(4) The action of the board shall be a complete defense to any action or suit brought against any association on account or by reason of the observance or compliance with the restriction on withdrawals.

(5) The board may make and promulgate any rules which shall be required for the conduct of the business of an association for which withdrawals have been restricted pursuant to this subsection, with a view to the protection of the rights of the savings account holders, creditors, and members of the association, both with respect to savings

account holders, creditors, and members who were such at the date of the restriction on withdrawals and those becoming savings account holders, creditors, or members after the restrictions have been imposed.

(d) While an application for withdrawals remains in effect and unpaid, no loan shall be made by an association secured by the pledge of a savings account.

(e) An application for withdrawal may be cancelled, in whole or in part, at any time by the holder of a savings account.

History. Acts 1963, No. 227, § 35; A.S.A. 1947, § 67-1835; Acts 2019, No. 315, § 2497.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c)(5).

Subchapter 6 — Foreign Associations

SECTION.
23-37-602, 23-37-603. [Repealed.]

23-37-602, 23-37-603. [Repealed.]

Publisher's Notes. These sections, concerning agents, brokers, and broker's licenses, were repealed by Acts 2021, No. 576, §§ 4, 5, effective July 28, 2021. The sections were derived from the following sources:

23-37-602. Acts 1963, No. 227, § 13; A.S.A. 1947, § 67-1813.

23-37-603. Acts 1963, No. 227, §§ 14, 15; A.S.A. 1947, §§ 67-1814, 67-1815.

Subchapter 7 — Conversion, Merger, Etc.

SECTION.
23-37-703. Conversion of mutual association into stock association.

23-37-703. Conversion of mutual association into stock association.

(a) With the approval of the Savings and Loan Association Board [abolished], any mutual association may convert into a stock association under this chapter upon a majority vote of the members of the mutual association at an annual or any special meeting called to consider that action.

(b) Prior to the meeting of the members to consider conversion from a mutual association to a stock association, the board of directors of the mutual association shall file with the Supervisor of Savings and Loan Associations a petition for authority to convert, which shall set forth:

(1) The proposed bylaws and articles of incorporation of the stock association;

(2) The details of the plan for conversion;

(3) The form of the notice that will be given to members of the mutual association of the meeting to consider conversion and the time and manner in which the notice will be given;

(4) The preemptive rights to subscribe to permanent capital stock in the stock association that will be granted to members;

(5) The manner in which permanent capital stock in the stock association will be sold and distributed;

(6) The manner of computing the interest of each member in the general and special reserves of the mutual association; and

(7) Any other information applicable to the conversion which the supervisor may by rule prescribe.

(c) Upon the filing of a petition for authority to convert from a mutual association to a stock association, the board shall hold a hearing on the petition and shall issue its certificate of preliminary approval, if the board finds:

(1) The plan for conversion proposed in the petition is fair and equitable to the members of the mutual association;

(2) The notice to the members of the meeting to consider the plan of conversion fairly sets out the rights and obligations of the members under the plan;

(3) Under the plan for conversion, each member of the association is given the right to subscribe on a pro rata basis to his or her interest in the mutual association to stock in the resultant stock association, provided, fractional shares shall not be required to be issued;

(4) The plan of conversion makes adequate provision for the payment to each member of his or her pro rata interest in any excess special or general reserves of the mutual association;

(5) The conversion to a stock association will not impair the mutual association's financial condition or its ability to pay withdrawals of savings accounts or other creditors;

(6) The converted stock association would meet the requirements under this chapter for the granting of an original certificate of incorporation to a stock association under this chapter; and

(7) Not more than twenty-five percent (25%) of the outstanding permanent stock of the converted association, upon conversion, will be owned directly or beneficially by any one (1) individual.

(d)(1) Upon receipt of a certificate of preliminary approval, the board of directors of the mutual association shall call a meeting of the members to consider the plan of conversion.

(2) Notice of the meeting shall be given in the form and manner prescribed by the order of the board.

(3) A copy of the minutes of the proceedings of the meeting of the members, and copies of the articles of incorporation and bylaws adopted by the members, verified by the affidavit of the secretary of the association, shall be filed in the office of the supervisor and shall be presumptive evidence of the holding and actions of the meeting.

(e)(1) Upon the filing of the documents and the receipt of evidence satisfactory to the supervisor that the plan of conversion approved by the board has been implemented, the supervisor shall endorse his or her approval on the articles of incorporation of the proposed stock association, whereupon the stock association shall become and be deemed to be a stock association under this chapter.

(2) A copy of the articles of incorporation, bearing the endorsement of approval by the supervisor, shall be filed with the Secretary of State and with the county clerk of the county in which the home office of the association is located.

(f) Upon the conversion from a mutual association to a stock association, the corporate existence of the association shall not terminate, but the stock association shall be deemed to be a continuation of the entity of the former mutual association. All the provisions regarding property and other rights contained in § 23-37-701 shall apply to the conversion of a mutual association to a stock association so that the stock association shall be a continuation of the corporate entity of the former mutual association and continue to have all of its property and rights.

History. Acts 1963, No. 227, § 52; 1973, No. 292, § 5; A.S.A. 1947, § 67-1852; Acts 2019, No. 315, § 2498.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (b)(7).

Subchapter 8 — Regional Savings and Loan Act of 1987

SECTION.
23-37-811. Registration of association — Reports — Rules.

23-37-811. Registration of association — Reports — Rules.

(a) Each Arkansas association, Arkansas savings and loan holding company, southern region association controlling an Arkansas association, and southern region savings and loan holding company controlling an Arkansas association which engages in a transaction which requires approval of the Savings and Loan Association Board [abolished] pursuant to § 23-37-807 shall, within thirty (30) days after approval of the transaction, initially register and file annually with the board forms prescribed by the board. These forms shall include such information with respect to the financial condition and operations, management, and relations between applicable associations and savings and loan holding companies, and related matters, as the board may consider necessary or appropriate to carry out the purposes of these sections.

(b) To the extent authorized by law, the board may make examinations of each association or savings and loan holding company required to be registered pursuant to subsection (a) of this section and any service corporation of the association, the cost of which must be assessed against and paid by the association.

(c) The board may enter into cooperative and reciprocal agreements with the association and savings and loan holding company regulatory authorities of any state or of the United States for the periodic examination of associations and savings and loan holding companies that are required to be registered under the provisions of subsection (a) of this section and may accept reports of examinations and other records from the authorities in lieu of conducting its own examinations.

(d) The board may establish rules to carry out the purposes of this subchapter.

History. Acts 1987, No. 45, § 10; 2019, No. 315, § 2499.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (d).

CHAPTER 38

BUILDING AND LOAN ASSOCIATIONS — MISCELLANEOUS PROVISIONS

SUBCHAPTER.

Subchapter 1 — General Provisions

[Repealed.]

SECTION.

23-38-101, 23-38-102. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2013, No. 1144, § 4. The subchapter was derived from the following sources:

23-38-101. Acts 1929, No. 128, § 4a, as added by Acts 1931, No. 236, § 1; 1929, No. 128, §§ 5-7; 1931, No. 236, §§ 2, 3; Pope's Dig., §§ 979-982; A.S.A. 1947, §§ 67-801 — 67-804.

23-38-102. Acts 1929, No. 128, §§ 28, 29; 1931, No. 236, § 13; Pope's Dig., §§ 1005, 1006; A.S.A. 1947, §§ 67-842, 67-843; Acts 2005, No. 1994, § 150.

Subchapter 2 — Organization and Operation

[Repealed.]

SECTION.

23-38-201 — 23-38-220. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2013, No. 1144, § 4. The subchapter was derived from the following sources:

23-38-201. Acts 1929, No. 128, § 13; Pope's Dig., § 989; A.S.A. 1947, § 67-816.

23-38-202. Acts 1929, No. 128, § 15; Pope's Dig., § 991; A.S.A. 1947, § 67-822.

23-38-203. Acts 1929, No. 128, § 9; Pope's Dig., § 984; A.S.A. 1947, § 67-819.

23-38-204. Acts 1929, No. 128, § 8; Pope's Dig., § 983; A.S.A. 1947, § 67-818.

23-38-205. Acts 1929, No. 128, § 19; 1931, No. 236, § 10; Pope's Dig., § 995; A.S.A. 1947, § 67-811.

23-38-206. Acts 1929, No. 128, § 14; Pope's Dig., § 990; A.S.A. 1947, § 67-817.

23-38-207. Acts 1929, No. 128, § 27a, as added by Acts 1931, No. 236, § 12; Pope's Dig., § 1004; A.S.A. 1947, § 67-814.

23-38-208. Acts 1933, No. 54, § 2; Pope's Dig., § 1036; A.S.A. 1947, § 67-825.

23-38-209. Acts 1929, No. 128, § 44, as added by Acts 1931, No. 236, § 17; Pope's Dig., § 1021; A.S.A. 1947, § 67-826.

23-38-210. Acts 1929, No. 128, § 11; 1931, No. 60, § 1; 1935, No. 40, § 1; Pope's Dig., § 985; Acts 1939, No. 343, § 2; 1955, No. 149, § 2; A.S.A. 1947, § 67-830.

23-38-211. Acts 1929, No. 128, § 11a, as added by Acts 1931, No. 236, § 6; Pope's Dig., § 986; Acts 1955, No. 149, § 3; 1961, No. 73, § 4; A.S.A. 1947, § 67-831.

23-38-212. Acts 1929, No. 128, § 37; Pope's Dig., § 1015; A.S.A. 1947, § 67-833.

23-38-213. Acts 1929, No. 128, § 33; Pope's Dig., § 1010; A.S.A. 1947, § 67-834.

23-38-214. Acts 1929, No. 128, § 34; 1931, No. 236, § 14; Pope's Dig., § 1011; A.S.A. 1947, § 67-835.

23-38-215. Acts 1933, No. 54, § 4; Pope's Dig., § 1038; A.S.A. 1947, § 67-838.

23-38-216. Acts 1929, No. 128, § 40; Pope's Dig., § 1018; Acts 1939, No. 169, § 1; A.S.A. 1947, § 67-836.

23-38-217. Acts 1929, No. 128, § 34a, as added by Acts 1931, No. 236, § 15; Pope's Dig., § 1012; A.S.A. 1947, § 67-837.

23-38-218. Acts 1935, No. 128, § 5; Pope's Dig., § 1043; A.S.A. 1947, § 67-847.

23-38-219. Acts 1932 (2nd Ex. Sess.), No. 11, § 1; Pope's Dig., § 1028; A.S.A. 1947, § 67-839.

23-38-220. Acts 1929, No. 128, § 32; Pope's Dig., § 1009; A.S.A. 1947, § 67-863.

Subchapter 3 — Liquidation

[Repealed.]

SECTION.

23-38-301 — 23-38-307. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2013, No. 1144, § 4. The subchapter was derived from the following sources:

23-38-301. Acts 1933, No. 54, § 1; Pope's Dig., § 1035; A.S.A. 1947, § 67-848.

23-38-302. Acts 1929, No. 128, § 23; Pope's Dig., § 999; A.S.A. 1947, § 67-849.

23-38-303. Acts 1929, No. 128, § 24; 1931, No. 236, § 11; Pope's Dig., § 1000; Acts 1985, No. 1043, § 1; A.S.A. 1947, § 67-850.

23-38-304. Acts 1929, No. 128, § 24; 1931, No. 236, § 11; Pope's Dig., § 1000; Acts 1985, No. 1043, § 1; A.S.A. 1947, § 67-850.

23-38-305. Acts 1932 (2nd Ex. Sess.), No. 10, §§ 1-4, 6; Pope's Dig., §§ 1029-1032, 1034; A.S.A. 1947, §§ 67-851 — 67-854, 67-856.

23-38-306. Acts 1932 (2nd Ex. Sess.), No. 10, § 5; Pope's Dig., § 1033; A.S.A. 1947, § 67-855.

23-38-307. Acts 1929, No. 128, § 11c, as added by Acts 1931, No. 236, § 7; Pope's Dig., § 987; A.S.A. 1947, § 67-832.

Subchapter 4 — Prohibited Practices

[Repealed.]

SECTION.

23-38-401 — 23-38-404. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2013, No. 1144, § 4. The subchapter was derived from the following sources:

23-38-401. Acts 1929, No. 128, § 43, as added by Acts 1931, No. 236, § 16; Pope's Dig., § 1020; A.S.A. 1947, § 67-864.

23-38-402. Acts 1929, No. 128, § 31; Pope's Dig., § 1008; A.S.A. 1947, § 67-865; Acts 2005, No. 1994, § 151.

23-38-403. Acts 1929, No. 128, § 45, as added by Acts 1931, No. 236, § 18; Pope's Dig., § 1022; A.S.A. 1947, § 67-866; Acts 2005, No. 1994, § 434.

23-38-404. Acts 1929, No. 128, § 30; Pope's Dig., § 1007; A.S.A. 1947, § 67-867; Acts 2005, No. 1994, § 445.

CHAPTER 39

MORTGAGE LOAN COMPANIES AND LOAN BROKERS

SUBCHAPTER.

5. Fair Mortgage Lending Act.

Subchapter 5 — Fair Mortgage Lending Act

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

23-39-502. Definitions.

As used in this subchapter:

(1) "Applicant" means a person that has applied to become licensed under this subchapter as a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer;

(2) "Branch manager" means the individual who is in charge of the business operations of one (1) or more branch offices of a mortgage broker, mortgage banker, or mortgage servicer;

(3) "Branch office" means a location that is separate and distinct from the licensee's principal place of business and includes any location from which business is conducted under the license or in the name of the mortgage broker, mortgage banker, or mortgage servicer:

(A) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this subchapter at the branch office;

(B) At which the licensee's name, advertising, promotional materials, or signage suggests that mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued; or

(C) Which, due to the actions of any employee, associate, loan officer, or transitional loan officer of the licensee, may be construed by the public as a branch office of the licensee where mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued;

(4) "Commissioner" means the Securities Commissioner and includes the commissioner's designees;

(5)(A) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

(B) A person is presumed to control a company if the person:

(i) Is a director, general partner, or executive officer of the company;

(ii) Directly or indirectly has the right to vote twenty-five percent (25%) or more of a class of a voting security of the company or has the power to sell or direct the sale of twenty-five percent (25%) or more of a class of voting securities of the company;

(iii) In the case of a limited liability company, is a managing member of the limited liability company; or

(iv) In the case of a partnership, has the right to receive upon dissolution or has contributed ten percent (10%) or more of the capital of the partnership;

(6) "Control affiliate" means a partnership, corporation, trust, limited liability company, or other organization that directly or indirectly controls or is controlled by the applicant;

(7) "Control person" means an individual who directly or indirectly exercises control over the applicant;

(8) "Employee" means an individual who is licensed with or employed by a mortgage broker, mortgage banker, or mortgage servicer,

whether by employment contract, agency, or other arrangement and regardless of whether the individual is treated as an employee for purposes of compliance with the federal income tax laws;

(9)(A) "Exempt person" means a person not required to be licensed as a mortgage broker, mortgage banker, mortgage servicer, loan officer, or transitional loan officer under this subchapter.

(B) "Exempt person" includes any of the following:

(i) An employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(ii) An agency or corporate instrumentality of the federal government or any state, county, or municipal government granting mortgage loans under specific authority of the laws of any state or of the United States;

(iii) A trust company or industrial loan company chartered under the laws of Arkansas;

(iv) A small-business investment corporation licensed under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as it existed on January 1, 2011;

(v) A real estate investment trust as defined in 26 U.S.C. § 856, as it existed on January 1, 2011;

(vi) A state or federally chartered bank, an operating subsidiary of a state-chartered bank regulated by the State Bank Department, a savings bank, a savings and loan association, or a credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration;

(vii) An agricultural loan organization that is subject to licensing, supervision, or auditing by the Farm Service Agency, Commodity Credit Corporation, Rural Development Housing and Community Facilities Programs, Farm Credit Administration, or the United States Department of Agriculture;

(viii) A nonprofit corporation that:

(a) Qualifies as a nonprofit entity under § 501(c)(3) of the Internal Revenue Code;

(b) Is not primarily in the business of soliciting or brokering mortgage loans; and

(c) Makes or services mortgage loans to promote home ownership or home improvements for the disadvantaged;

(ix)*(a)* A licensed real estate agent or broker who is performing those activities subject to the regulation of the Arkansas Real Estate Commission.

(b) Notwithstanding subdivision (9)(B)(ix)*(a)* of this section, "exempt person" does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan;

(x) A person who engages in seller-financed transactions or who as a seller of real property receives mortgages, deeds of trust, or other

security instruments on real estate as security for a purchase money obligation if:

(a) The person does not receive from or hold on behalf of the borrower any funds for the payment of insurance or taxes on the real property; and

(b) The seller does not sell the liens or mortgages in the secondary market other than to affiliated or subsidiary persons;

(xi) An individual or husband and wife who provide funds for investment in loans secured by a lien on real property on his or her or their own account and who do not:

(a) Charge a fee or cause a fee to be paid for any service other than the normal and scheduled rates for escrow, title insurance, and recording services; and

(b) Collect funds to be used for the payment of any taxes or insurance premiums on the property securing the loans;

(xii) An attorney licensed in Arkansas rendering legal services to his or her client, when the conduct that would subject the attorney to the jurisdiction of this subchapter is ancillary to the provision of the legal services offered;

(xiii) A person performing any act under order of any court;

(xiv) A person acting as a mortgage broker, mortgage banker, or mortgage servicer for any person located in Arkansas, if the mortgage broker, mortgage banker, or mortgage servicer has no office or employee in Arkansas and the real property that is the subject of the mortgage is located outside of Arkansas;

(xv) An officer or employee of an exempt person described in subdivisions (9)(B)(ii)-(xiv) of this section if acting in the scope of employment for the exempt person; and

(xvi) A manufactured or modular home retailer and its employees if:

(a) The manufactured or modular home retailer or its employees perform only administrative or clerical tasks on behalf of a person required to be licensed under this subchapter; or

(b) The manufactured or modular home retailer and its employees:

(1) Do not receive compensation or financial gain for engaging in loan officer activities that exceeds the amount of compensation or financial gain that could be received in a comparable cash transaction for a manufactured home;

(2) Disclose to the consumer in writing any corporate affiliation with a mortgage banker;

(3) Provide referral information for at least one (1) unaffiliated creditor if the manufactured or modular home retailer has a corporate affiliation with a mortgage banker and the mortgage banker offers a recommendation; and

(4)(A) Do not directly negotiate loan terms with the consumer or lender.

(B) As used in subdivision (9)(B)(xvi)*(b)(4)(A)* of this section, "loan terms" includes rates, fees, and other costs;

(10) "Licensee" means a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer that is licensed under this subchapter;

(11)(A) "Loan officer" means an individual other than an exempt person described in subdivision (9) of this section who in exchange for compensation as an employee of or who otherwise receives compensation or remuneration from a mortgage broker or a mortgage banker:

(i) Solicits or offers to solicit an application for a mortgage loan;

(ii) Accepts or offers to accept an application for a mortgage loan;

(iii) Negotiates or offers to negotiate the terms or conditions of a mortgage loan;

(iv) Issues or offers to issue a mortgage loan commitment or interest rate guarantee agreement; or

(v) Provides or offers to provide modification of a mortgage loan.

(B) "Loan officer" does not include:

(i) An individual who performs clerical or administrative tasks in the processing of a mortgage loan at the direction of and subject to the supervision and instruction of a licensed loan officer;

(ii) An underwriter if the individual performs no activities under subdivision (11)(A) of this section; or

(iii) An individual who is solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D), as it existed on January 1, 2011;

(12) "Make a mortgage loan" means to close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan;

(13)(A) "Managing principal" means a person who meets the requirements of § 23-39-508 and who agrees to be primarily responsible for the operations of a licensed mortgage broker, mortgage banker, or mortgage servicer.

(B) "Managing principal" includes a qualifying individual;

(14) "Mortgage banker" means a person who engages in the business of making mortgage loans for compensation or other gain;

(15) "Mortgage broker" means a person who for compensation or other gain or in the expectation of compensation or other gain and, regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers:

(A) Accepts or offers to accept an application for a mortgage loan;

(B) Solicits or offers to solicit an application for a mortgage loan;

(C) Negotiates or offers to negotiate the terms or conditions of a mortgage loan; or

(D) Issues or offers to issue mortgage loan commitments or interest rate guarantee agreements to borrowers;

(16) "Mortgage loan" means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, reverse mortgage, or other equivalent consensual security interest encumbering:

(A) A dwelling as defined in section 1602(w) of the Truth in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on January 1, 2011; or

(B) Residential real estate upon which is constructed or intended to be constructed a dwelling;

(17)(A) "Mortgage servicer" means a person that receives or has the right to receive from or on behalf of a borrower:

(i) Funds or credits in payment for a mortgage loan; or

(ii) The taxes or insurance associated with a mortgage loan.

(B) In the case of a home equity conversion mortgage or a reverse mortgage, "mortgage servicer" includes a person that makes a payment to the borrower;

(18) "Operating subsidiary" means a separate corporation, limited liability company, or similar entity in which a national or state bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, maintains more than fifty percent (50%) voting rights, a controlling interest, or otherwise controls the subsidiary and no other party controls more than fifty percent (50%) of the voting rights or a controlling interest in the subsidiary;

(19) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized;

(20) "Principal place of business" means a stationary construction consisting of at least one (1) enclosed room or building in which negotiations of mortgage loan transactions of others may be conducted in private or in which the primary business functions of the licensee are conducted;

(21) "Reverse mortgage" means a nonrecourse loan that pays a homeowner loan proceeds drawn from accumulated home equity;

(22) "Transitional loan officer" means an individual who, in exchange for compensation as an employee of, or who otherwise receives compensation or remuneration from, a mortgage broker or a mortgage banker, is authorized to act as a loan officer subject to a transitional loan officer license;

(23) "Transitional loan officer license" means a license that:

(A) Is issued to an individual who is employed by a mortgage banker or mortgage broker licensed under this subchapter;

(B) Is limited to a term of no more than one hundred twenty (120) days; and

(C) Is not subject to reapplication, renewal, or extension by the commissioner; and

(24) "Unique identifier" means a number or other identifier assigned by protocols established by the automated licensing system approved by the commissioner.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 1; 2009, No. 731, §§ 1-5; 2011, No. 894, §§ 1-4; 2013, No. 1167, §§ 1-4; 2019, No. 200, §§ 1-8; 2021, No. 531, §§ 1-3.

Amendments. The 2019 amendment inserted "transitional loan officer" in (1), in (3)(C), in (9)(A), and in (10); substituted "twenty-five percent (25%)" for "ten percent (10%)" twice in (5)(B)(ii); rewrote (9)(B)(xvi); substituted "§ 23-39-508" for "§ 23-39-505" in (13); added (22) and (23); redesignated former (22) as (24); and made stylistic changes.

The 2021 amendment deleted "a net branch or" following "includes" in the introductory language of (3); redesignated (13) as (13)(A); added (13)(B); redesignated (17) as (17)(A); and added (17)(B).

23-39-503. License required — Licensee records.

(a) It is unlawful for any person located in Arkansas other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, transitional loan officer, or mortgage servicer without first obtaining a license from the Securities Commissioner under this subchapter.

(b) It is unlawful for any person other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, transitional loan officer, or mortgage servicer with any person located in Arkansas without first obtaining a license from the commissioner under this subchapter.

(c) It is unlawful for any person other than an exempt person to employ, to compensate, or to appoint as its agent any person to act as a loan officer unless the loan officer is licensed as a loan officer or a transitional loan officer under this subchapter.

(d)(1) The license of a loan officer or a transitional loan officer terminates when the loan officer's or transitional loan officer's employment by or relationship with a mortgage broker or mortgage banker licensed under this subchapter terminates.

(2) When a loan officer or a transitional loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this subchapter or ceases to act as a loan officer or as a transitional loan officer, the mortgage broker or mortgage banker with which the person was affiliated or by which that person was employed shall notify the commissioner in writing within thirty (30) days from the date on which the loan officer or the transitional loan officer ceased to be employed or ceased activities as a loan officer or as a transitional loan officer.

(3)(A) A licensee that does not comply with subdivision (d)(2) of this section shall pay a late fee of two hundred fifty dollars ($250) for failure to timely notify the commissioner.

(B) The late fee may be waived, in whole or in part, at the sole discretion of the commissioner and for good cause shown.

(4) A loan officer or a transitional loan officer shall not be employed simultaneously by more than one (1) mortgage broker or mortgage banker licensed under this subchapter.

(e) Each mortgage broker and mortgage banker licensed under this subchapter shall maintain a list of all loan officers and all transitional loan officers employed by the mortgage broker or mortgage banker and

who engage or attempt to engage in business with any person in Arkansas.

(f) No person other than an exempt person shall hold himself or herself out as a mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer unless the person is licensed in accordance with this subchapter.

History. Acts 2003, No. 554, § 1; 2003 (2nd Ex. Sess.), No. 26, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 2; 2009, No. 731, § 6; 2019, No. 200, § 9; 2021, No. 531, § 4.

Amendments. The 2019 amendment inserted "transitional loan officer" in (a) and (b); inserted "or a transitional loan officer" in (c) and (d)(4); rewrote (d)(1) and (2); inserted "and all transitional loan officers" in (e); and inserted "or transitional loan officer" in (f).

The 2021 amendment redesignated (d)(1)(A) as (d)(1); deleted (d)(1)(B); and inserted "or a transitional loan officer" and "or transitional loan officer's" in (d)(1).

23-39-504. Rulemaking authority.

The Securities Commissioner may adopt any rules that he or she deems necessary to:

(1) Carry out the provisions of this subchapter;

(2) Provide for the protection of the borrowing public; and

(3) Provide any requirements necessary for the State of Arkansas to participate in a multistate automated licensing system; and

(4) Instruct mortgage brokers, mortgage bankers, mortgage servicers, loan officers, and transitional loan officers in interpreting this subchapter.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 3; 2019, No. 200, § 10.

Amendments. The 2019 amendment substituted "loan officers, and transitional loan officers" for "and loan officers" in (4).

23-39-505. Qualifications for licensure — Issuance.

(a)(1) A person desiring to obtain a license as a loan officer, transitional loan officer, mortgage banker, mortgage broker, or mortgage servicer shall make written application for licensure to the Securities Commissioner in the form prescribed by the commissioner.

(2) The commissioner may approve by rule or order a limited license with limitations, qualifications, or conditions.

(3) The application may require that the information be submitted in an electronic format.

(4) In addition to any other information required under this subchapter or rules adopted by the commissioner, the application shall contain information the commissioner deems necessary and shall include the following:

(A) For a license as a mortgage banker, mortgage broker, or mortgage servicer:

(i) The applicant's name, address, and federal employer identification number;

(ii) The applicant's form of business and place of organization, including without limitation:

(a) A copy of the applicant's organizational and governance documents; and

(b) If the applicant is a foreign entity, a copy of the certificate of authority from the Secretary of State;

(iii) The applicant's proposed method of doing business, including whether the applicant is proposing to be licensed as a mortgage broker, mortgage banker, or mortgage servicer;

(iv) The applicant's proposed locations for doing business;

(v) The qualifications, business history, and financial condition of the applicant; and

(vi) A disclosure of a beneficial interest in an affiliated industry business held by the applicant or by a principal, officer, director, or employee of the applicant; and

(B) For a license as a loan officer, transitional loan officer, or managing principal of an applicant:

(i) The applicant's name, address, and Social Security number; and

(ii) The qualifications, business history, and financial condition of the individual or managing principal of an applicant, including:

(a) A description of an injunction or administrative order, including a denial to engage in a regulated activity by any state or federal authority that had jurisdiction over the applicant;

(b) Disclosure of a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the mortgage industry, the securities industry, the insurance industry, or any other activity pertaining to financial services;

(c) Disclosure of a felony conviction; and

(d) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive fingerprints for a state, national, and international criminal background check.

(b) In addition to meeting the requirements imposed by the commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least eighteen (18) years of age;

(2)(A) Have received a high school diploma or a high school equivalency diploma approved by the Adult Education Section.

(B) Subdivision (b)(2)(A) of this section does not apply to an individual who is licensed as a loan officer on July 1, 2007;

(3) Have satisfactorily completed any educational and testing requirements as the commissioner may by rule or order impose; and

(4) Furnish to the commissioner or through an automated licensing system, information concerning the applicant's identity and background, including:

(A) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive

fingerprints for a state, national, and international criminal background check; and

(B) Personal history and experience in a form prescribed by the automated licensing system and the commissioner, including the submission of authorization for the automated licensing system and the commissioner to obtain:

(i) An independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as it existed on January 1, 2011; and

(ii) Information related to any administrative, civil, or criminal proceeding by a governmental jurisdiction.

(c) Each applicant for licensure as a mortgage broker, mortgage banker, or mortgage servicer shall comply with the following requirements at the time of application and at all times thereafter:

(1) If the applicant is a sole proprietor, the applicant shall have at least three (3) years of experience in mortgage lending or other experience or competency requirements as the commissioner may adopt by rule or order;

(2) If the applicant is a general or limited partnership, at least one (1) of its general partners shall have the experience as described in subdivision (c)(1) of this section;

(3) If the applicant is a corporation, at least one (1) of its principal officers shall have the experience as described in subdivision (c)(1) of this section; and

(4) If the applicant is a limited liability company, at least one (1) of its managers shall have the experience as described under subdivision (c)(1) of this section.

(d) Each applicant for a license as a mortgage broker, mortgage banker, or mortgage servicer shall identify in its application one (1) person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Each applicant for initial licensure shall pay a filing fee of:

(1) Seven hundred fifty dollars ($750) for the principal place of business of a mortgage broker, mortgage banker, or mortgage servicer;

(2) One hundred dollars ($100) for each branch office of a mortgage broker, mortgage banker, or mortgage servicer; and

(3) Fifty dollars ($50.00) for each loan officer.

(f)(1) Each mortgage broker, mortgage banker, and mortgage servicer shall post a surety bond in an amount:

(A) Based upon loan activity during the previous year;

(B) Not less than one hundred thousand dollars ($100,000); and

(C) As prescribed by rule or order of the commissioner.

(2) The surety bond shall be in a form satisfactory to the commissioner.

(3) Every bond shall provide for suit on the bond by any person who has a cause of action under this subchapter.

(4) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(5) A surety bond shall cover claims for at least five (5) years after the licensee ceases to provide mortgage services in this state or longer if required by the commissioner.

(g) An applicant filing for licensure as a mortgage banker or mortgage servicer shall file with the commissioner as part of his or her application audited financial statements that reflect that the applicant has a net worth of at least twenty-five thousand dollars ($25,000) and are:

(1) Prepared by an independent certified public accountant;

(2) Prepared according to:

(A) Generally accepted accounting principles as promulgated by the Financial Accounting Standards Board; or

(B) International financial reporting standards promulgated by the International Financial Reporting Standards Foundation and the International Accounting Standards Board;

(3) Accompanied by an opinion acceptable to the commissioner; and

(4) Dated within fifteen (15) months preceding the date on which the application is filed.

(h) [Repealed.]

(i) Each principal place of business and each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall obtain a separate license.

(j) Except as set forth in § 23-39-503(d), each license issued by the commissioner under this subchapter expires at the close of business on December 31 of the calendar year unless the license is:

(1) Previously surrendered by the licensee and the surrender is accepted by the commissioner;

(2) Abandoned by the licensee as provided in § 23-39-506;

(3) Suspended or revoked by the commissioner; or

(4) Terminated if the temporary authority granted to a transitional loan officer has expired due to:

(A) The end of a one hundred twenty (120) day period; or

(B) The individual's having received a loan officer license under this subchapter.

(k) Licenses issued under this subchapter are not transferable.

(l)(1) Control of a licensee shall not be acquired through a stock or equity purchase, transfer of interest, or other device without the prior written consent of the commissioner.

(2) A person seeking to acquire control of a licensee, at least thirty (30) days before the proposed change of control, shall:

(A) Pay the commissioner a fee of one hundred dollars ($100);

(B) Submit to the commissioner:

(i) The information required under subdivision (a)(4)(D) of this section;

(ii) The proposed transaction documents; and

(iii) Any other information deemed relevant by the commissioner; and

(C) Submit financial statements according to subsection (g) of this section, if a licensee holds a mortgage banker or mortgage servicer license.

(D) [Repealed.]

(3) The commissioner may refuse to give written consent if he or she finds that any of the grounds for denial, revocation, or suspension of a license under § 23-39-514 are applicable to the person seeking to acquire control of a license.

(4)(A) Failure to notify the commissioner at least thirty (30) days before the proposed change of control shall result in a late fee of one hundred dollars ($100).

(B) All or part of the late fee may be waived by the commissioner for good cause.

(m)(1) An application filed with the commissioner may be withdrawn upon written request of the applicant delivered to the commissioner at any time before the granting of the license.

(2) However, if a notice of intent to deny the application has been sent to the applicant, the applicant shall not withdraw the application except upon the written direction of the commissioner.

(n)(1) Unless a proceeding has been commenced to suspend or revoke the license, a license may be surrendered by a licensee by filing a written request to surrender the license in a form acceptable to the commissioner.

(2) The surrender of the license becomes effective upon acceptance by the commissioner.

(3) Notwithstanding a surrender or termination of a license and acceptance of the surrender or termination by the commissioner, if a licensee or any person acting on behalf of the licensee has knowingly violated any provision of this subchapter or any rule or order promulgated or issued under this subchapter:

(A) A proceeding may be commenced at any time within one (1) year following the effective date of the surrender or termination of the license; and

(B) An order may be entered revoking the license as of a date before the acceptance of the surrender or termination of the license.

(o) To issue a loan officer license, the commissioner shall find that:

(1) The applicant has:

(A) Never had a loan officer license revoked in a governmental jurisdiction;

(B) [Repealed.]

(C) Demonstrated sufficient financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the loan officer will operate honestly, fairly, and efficiently within the purposes of this subchapter; and

(D) Complied with the prelicensing education and testing requirements of subdivision (b)(3) of this section; and

(2) The applicant's employer has met the surety bond requirement of subdivision (f)(1) of this section.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 4; 2009, No. 164, § 10; 2009, No. 731, §§ 7-17; 2011, No. 894, §§ 5-8; 2015, No. 1115, § 29; 2017, No. 669, §§ 1-3; 2019, No. 200, §§ 11-17; 2019, No. 910, § 2348; 2021, No. 531, §§ 5-7.

Amendments. The 2017 amendment substituted "a managing principal of the applicant" for "any partner, officer, director, any person occupying a similar status or performing similar functions, any managing principal, or any person directly or indirectly controlling the applicant" at the end of (a)(4)(D)(i); added (a)(4)(D)(ii)*(d)*; substituted "Each" for "In addition to the requirements under subsections (a) and (b) of this section, each" in the introductory language of (c); and rewrote (f).

The 2019 amendment by No. 200 inserted "transitional loan officer" in (a)(1); inserted "rule or" in (a)(2); substituted "copy" for "certified copy" in (a)(4)(B)(i); rewrote (g)(2); added (j)(4); repealed (l)(2)(D) and (o)(1)(B); and made stylistic changes.

The 2019 amendment by No. 910 substituted "Adult Education Section of the Division of Workforce Services" for "Department of Career Education" in (b)(2)(A).

The 2021 amendment rewrote (a)(4); inserted "for a license as a mortgage broker, mortgage banker, or mortgage servicer" in (d); and repealed (h).

U.S. Code. Section 603(p) of the Fair Credit Reporting Act, referred to in subsection (b) of this section, is codified as 15 U.S.C. § 1681a(p).

23-39-506. License renewal — Termination.

(a) A licensed mortgage broker, mortgage banker, and mortgage servicer wishing to renew a license shall:

(1) File a renewal application with the Securities Commissioner in the form prescribed by the commissioner between November 1 and December 31 of the calendar year;

(2) Present proof to the commissioner that the surety bond required in § 23-39-505(f)(1) is still in effect; and

(3) Pay the commissioner an annual renewal fee of three hundred fifty dollars ($350) for the licensee's principal place of business and one hundred dollars ($100) for each of the licensee's branch offices.

(b) The failure of a mortgage broker, mortgage banker, or mortgage servicer to timely file a renewal application shall subject the licensee to a late fee of one hundred dollars ($100).

(c)(1) Each licensed loan officer wishing to renew a license shall:

(A) File an application with the commissioner in the form prescribed by the commissioner between November 1 and December 31 of the calendar year;

(B) Comply with the continuing education requirements as required by rules promulgated by the commissioner; and

(C) Pay an annual renewal fee of fifty dollars ($50.00).

(2) If an initial loan officer license is issued between November 1 through December 31 of the calendar year, the loan officer is not required to file a renewal application until the subsequent renewal period.

(d) The failure of a loan officer to timely file a renewal application shall subject the loan officer to a late fee of fifty dollars ($50.00).

(e)(1)(A) A late fee assessed under subsection (b) or subsection (d) of this section shall be in addition to the renewal application fee under subsection (a) or subsection (c) of this section.

(B) All or part of the late fee may be waived by the commissioner for good cause.

(2)(A) The commissioner may consider an application and a license to be abandoned and surrendered and may require the licensee to comply with the requirements for the initial issuance of a license under this subchapter in order to continue in business if the licensee:

(i) Fails to file a renewal application within fifteen (15) days after the date the renewal application is due;

(ii) Unreasonably fails to remedy any deficiency in an application within thirty (30) days following the sending of written notice to the licensee; or

(iii) Unreasonably fails to deliver additional information or documents to the commissioner within thirty (30) days following the sending of written notice to the licensee.

(B) For purposes of this subdivision (e)(2), notice shall be complete upon:

(i) Deposit in the United States mail, postage prepaid, to the address of the licensee listed in the application; or

(ii) Delivery through an automated licensing system approved by the commissioner.

(3) The commissioner shall not reissue a license for which a late fee has accrued as a result of a person's failure to timely file a renewal application unless the late fee has been paid or waived by the commissioner for good cause.

(f)(1) A mortgage banker or a mortgage servicer shall submit audited financial statements to the commissioner within ninety (90) days after the end of the mortgage banker's or mortgage servicer's fiscal year.

(2) The audited financial statements submitted to the commissioner under subdivision (f)(1) of this section shall:

(A) Reflect that the mortgage banker or mortgage servicer has a net worth of at least twenty-five thousand dollars ($25,000); and

(B) Comply with the requirements of § 23-39-505(g)(1)-(3).

(3)(A) Failure to timely submit audited financial statements to the commissioner shall result in a late fee of two hundred fifty dollars ($250).

(B) All or part of the late fee may be waived by the commissioner for good cause.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 5; 2009, No. 731, § 18; 2011, No. 894, §§ 9, 10; 2019, No. 200, § 18; 2021, No. 531, § 8.

Amendments. The 2019 amendment substituted "Comply with" for "Certify that the applicant has complied with" in (c)(2).

The 2021 amendment redesignated (c) as (c)(1); and added (c)(2).

23-39-509. Offices — Address changes — Location of records.

(a) A mortgage broker, mortgage banker, and mortgage servicer shall maintain a principal place of business.

(b) A mortgage broker, mortgage banker, and mortgage servicer shall identify the location in which the licensee's books, records, and files pertaining to mortgage loan transactions are maintained.

(c) The Securities Commissioner by rule may impose terms and conditions under which the records and files shall be maintained, including if the records must be maintained in this state.

(d)(1) A principal place of business or branch office from which a mortgage broker, mortgage banker, or mortgage servicer conducts mortgage loan activity or business shall be a physical address.

(2) Mortgage loan activity or business includes without limitation the address appearing on business cards, stationery, promotional materials, or advertising.

(3) The commissioner may by rule or order impose terms and conditions under which a loan officer may conduct mortgage loan activity or business from a location that is not licensed under this subchapter as a principal place of business or branch office.

(e)(1) A mortgage banker, mortgage broker, or mortgage servicer shall not use any name or address to conduct mortgage loan activity or business other than the name and address specified on the license issued by the commissioner.

(2) A mortgage broker, mortgage banker, or mortgage servicer may change the name of the licensee or address of the principal place of business or branch office specified on the most recent filing with the commissioner if:

(A)(i) At least thirty (30) calendar days before the change, the licensee files a notice of the change with the commissioner.

(ii) If necessary, the licensee shall provide a bond rider or endorsement, or addendum, as applicable, to the surety bond on file with the commissioner that reflects the new name or change of address of the licensee's principal place of business; and

(B) The commissioner does not disapprove the name change or the change of address in writing or request additional information within the thirty-day time frame described in subdivision (e)(2)(A)(i) of this section.

(f) A mortgage broker, mortgage banker, or mortgage servicer that ceases to do business in this state shall:

(1) Notify the commissioner within thirty (30) days after the mortgage broker, mortgage banker, or mortgage servicer ceases to do business in this state that the mortgage broker, mortgage banker, or mortgage servicer has ceased to do business in this state; and

(2) Provide the commissioner the address where all records pertaining to loans made or serviced in this state will be maintained for the period of time required by this subchapter or rule of the commissioner.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 7; 2009, No. 731, § 20; 2011, No. 894, § 11; 2021, No. 531, §§ 9, 10.

Amendments. The 2021 amendment redesignated (d) as (d)(1) and (d)(2); added (d)(3); and rewrote (e).

23-39-510. Licensee duties.

(a) In addition to duties imposed by other statutory or common law, a person required to be licensed under this subchapter shall:

(1) Safeguard and account for any money received for, from, or on behalf of the borrower;

(2) Follow reasonable and lawful instructions from the borrower;

(3) Act with reasonable skill, care, and diligence;

(4) Make reasonable efforts with lenders with whom a mortgage broker regularly does business to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan and the loan options for which the borrower qualifies with such lenders;

(5) Include the full name, address, and telephone number of the licensee in all solicitations and advertisements; and

(6)(A) Provide the Securities Commissioner with a quarterly report of mortgage activity.

(B) The commissioner may designate by rule or order the information to be provided in the quarterly report.

(b) At the time a mortgage servicer accepts assignment of servicing rights for a mortgage loan in this state, the mortgage servicer shall disclose to the borrower the following:

(1) Any notice required by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq., as it existed on January 1, 2017, or by regulations promulgated thereunder; and

(2) A notice in a clear and conspicuous form and content that the mortgage servicer is licensed in Arkansas and that complaints about the mortgage servicer may be submitted to the commissioner.

(c) The unique identifier of a person soliciting or originating a mortgage loan shall be clearly shown on all mortgage loan application forms, solicitations, advertisements, business cards, websites, and any other document or medium established by rule or order of the commissioner.

(d)(1) A mortgage broker, mortgage banker, or mortgage servicer licensed or required to be licensed under this subchapter shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information.

(2) A policy or procedure described in subdivision (d)(1) of this section shall be tailored to the size and sophistication of the mortgage broker, mortgage banker, or mortgage servicer.

(3) The commissioner may impose additional conditions by rule or order to clarify the requirements of a policy or procedure described in subdivision (d)(1) of this section.

(e) A mortgage broker, mortgage banker, or mortgage servicer shall establish, enforce, and maintain policies and procedures reasonably designed to achieve compliance with this subchapter and any other

state law or rule or federal law or regulation that is applicable to any business the licensee is authorized to conduct in this state.

History. Acts 2003, No. 554, § 1; 2009, No. 731, § 21; 2011, No. 894, § 12; 2017, No. 669, § 4; 2021, No. 531, § 11.

Amendments. The 2017 amendment inserted present (b) and redesignated former (b) as (c).

The 2021 amendment added (d) and (e).

23-39-511. Records — Escrow funds or trust accounts.

(a) The Securities Commissioner shall keep a list of all applicants for licensure under this subchapter that includes:

(1) The applicant's name;

(2) The date of application;

(3) The applicant's place of residence; and

(4) Whether the license was granted or refused.

(b)(1) The commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers and their respective transitional loan officers.

(2) The roster under subdivision (b)(1) of this section shall:

(A) Be kept on file in the office of the commissioner;

(B) Contain information regarding all orders or other actions taken against the licensees and other persons; and

(C) Be open to public inspection.

(c) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the commissioner.

(d)(1) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall file a correcting amendment to the information contained in the document within thirty (30) days from the date on which the change takes place.

(2)(A) Any licensee that does not comply with subdivision (d)(1) of this section shall pay a late fee of two hundred fifty dollars ($250).

(B) All or part of the late fee may be waived by the commissioner for good cause.

(e)(1) A licensee shall maintain in a segregated escrow fund or trust account any funds that come into the licensee's possession but that are not the licensee's property and which the licensee is not entitled to retain under the circumstances.

(2) The escrow fund or trust account under subdivision (e)(1) of this section shall be held on deposit in a federally insured financial institution.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 2; 2009, No. 731, § 22; 2019, No. 200, § 19.

Amendments. The 2019 amendment inserted "and their respective transitional loan officers" in (b)(1); and deleted "loan officers" following "licensees" in (b)(2)(B).

23-39-512. Public inspection of records — Exceptions.

(a)(1) Unless otherwise specified in this section, all information filed with the Securities Commissioner shall be available for public inspection.

(2) The information contained in or filed with any application or report may be made available to the public under any rules the commissioner prescribes that are consistent with state or federal law governing the disclosure of public information.

(b) Except for reasonably segregable portions of information and records that by law would be made routinely available to a party in litigation with the commissioner, the commissioner shall not publish or make available the following information:

(1) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation;

(2) Interagency or intra-agency memoranda or letters, including:

(A) Generally, records that reflect discussions between or consideration by the commissioner or members of the staff of the State Securities Department or the staff of the Department of Commerce working for the State Securities Department, or both, of any action taken or proposed to be taken by the commissioner or by any members of the staff of the State Securities Department or the staff of the Department of Commerce working for the State Securities Department; and

(B) Specifically, reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the commissioner or prepared otherwise in the course of an examination or investigation or related litigation conducted by or on behalf of the commissioner;

(3) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including:

(A) Information concerning all employees of the State Securities Department or the Department of Commerce working for the State Securities Department and information concerning persons subject to regulation by the State Securities Department; and

(B) Personal information about employees of mortgage brokers, mortgage bankers, mortgage servicers, loan officers, or transitional loan officers reported to the commissioner under the State Securities Department's rules concerning registration of those persons;

(4)(A) Investigatory records compiled for law enforcement purposes to the extent that production of the records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication; or

(iii) Disclose the identity of a confidential source.

(B) The commissioner may also withhold investigatory records that would:

(i) Constitute an unwarranted invasion of personal privacy;

(ii) Disclose investigative techniques and procedures; or

(iii) Endanger the life or physical safety of law enforcement personnel.

(C) Investigatory records under this section include:

(i) All documents, records, transcripts, correspondence, and related memoranda and work products concerning examinations and other investigations and related litigation as authorized by law that pertain to or may disclose the possible violations by any person of any provision of any of the statutes or rules administered by the commissioner; and

(ii) All written communications from or to any person confidentially complaining or otherwise furnishing information respecting the possible violations, as well as all correspondence and memoranda in connection with the confidential complaints or information;

(5) Information contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions or mortgage lenders;

(6)(A) Financial records of mortgage bankers, mortgage brokers, mortgage servicers, loan officers, or transitional loan officers, obtained during or as a result of an examination by the State Securities Department.

(B) However, when a record under this subchapter is required to be filed with the commissioner as part of an application for license, annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, shall be public information unless sections of the information are bound separately and are marked "confidential" by the mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer upon its submission.

(C) Information under subdivision (6)(B) of this section bound separately and marked "confidential" shall be considered nonpublic until ten (10) days after the commissioner has given the mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer notice that an order will be entered declaring the material public.

(D) If the mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer believes the commissioner's order is incorrect, the mortgage banker, mortgage broker, mortgage servicer, loan officer, or transitional loan officer may seek an injunction from the Pulaski County Circuit Court ordering the State Securities Department to hold the information as nonpublic pending a final order from a court of competent jurisdiction if the order of the commissioner is appealed under applicable law;

(7) Trade secrets obtained from any person; or

(8) Any other records that are required to be closed to the public and are not considered open to public inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq., or under other law.

(c) This section does not prevent the commissioner from sharing with other state or federal law enforcement authorities, regulatory authorities, or self-regulatory organizations authorized by law any information that the commissioner may have or may obtain in aid of the enforcement of this subchapter or any other state or federal law.

(d)(1) Except as otherwise provided in this subchapter, the requirements of any federal or state law regarding privacy or confidentiality of any information or material provided to an automated licensing system under this subchapter and any privilege arising under federal or state law, including the rules of any federal or state court with respect to the information or material, shall continue to apply to the information or material after the information or material has been disclosed to the automated licensing system.

(2) The information or material provided to an automated licensing system under this subchapter may be shared with a state or federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

History. Acts 2003, No. 554, § 1; 2009, No. 731, §§ 23, 24; 2019, No. 200, §§ 20, 21; 2019, No. 315, § 2500; 2019, No. 910, §§ 573, 574.

Amendments. The 2019 amendment by No. 200 inserted "or transitional loan officer" and "or transitional loan officers" throughout (b)(3) and (b)(6).

The 2019 amendment by No. 315 substituted "statutes or rules" for "statutes, rules, or regulations" in (b)(4)(C)(i).

The 2019 amendment by No. 910, in (b)(2)(A), inserted "of the State Securities Department or the staff of the Department of Commerce working for the State Securities Department" twice, and made stylistic changes, inserted "or the Department of Commerce working for the State Securities Department" in (b)(3)(A), and substituted "State Securities Department" for "department's" in (b)(3)(B).

23-39-513. Prohibited activities.

In addition to the other activities that are prohibited under this subchapter, it is unlawful for any person other than a person described in § 23-39-502(9)(B)(vi) in the course of any mortgage loan transaction or activity:

(1) To misrepresent or conceal any material fact or make any false promise likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or to pursue a course of misrepresentation through agents or otherwise;

(2) To improperly refuse to issue a satisfaction or release of a mortgage;

(3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, that the mortgage banker, mortgage broker,

mortgage servicer, loan officer, or transitional loan officer is not entitled to retain;

(4) To pay, receive, or collect, in whole or in part, any commission, fee, or other compensation for brokering a mortgage loan in violation of this subchapter, including a mortgage loan brokered or solicited by any unlicensed person other than an exempt person;

(5) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information without disclosing the lengths of the loans, whether the interest rates are fixed or adjustable, and any other material limitations on the loans;

(6) To fail to disburse funds in accordance with a written commitment or agreement to make or service a mortgage loan;

(7) In connection with the advertisement, solicitation, brokering, making, servicing, purchase, or sale of any mortgage loan, to engage in any transaction, practice, or course of business that:

(A) Is not in good faith or fair dealing;

(B) Is misleading or deceptive; or

(C) Constitutes a fraud upon any person;

(8)(A) To broker or make a residential mortgage loan that contains a penalty for prepayment if the prepayment is made after the expiration of the thirty-six-month period immediately following the date on which the loan was made.

(B) A penalty for prepayment under subdivision (8)(A) of this section made within the thirty-six-month period shall not exceed any of the following amounts:

(i) Three percent (3%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the first twelve-month period immediately following the date the loan was made;

(ii) Two percent (2%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the second twelve-month period immediately following the date the loan was made; or

(iii) One percent (1%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the third twelve-month period immediately following the date the loan was made;

(9)(A) To influence or attempt to influence through coercion, extortion, or bribery the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.

(B) This subdivision (9) does not prohibit a mortgage broker or mortgage banker from asking the appraiser to do one (1) or more of the following:

(i) Consider additional appropriate property information;

(ii) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(iii) Correct errors in the appraisal report;

(10) To broker or make a refinancing of a residential mortgage loan when the refinancing charges additional points and fees, within a

twelve-month period after the original loan agreement was signed, unless the refinancing results in a reasonable, tangible net benefit to the borrower, considering all of the circumstances surrounding the refinancing;

(11) To broker, make, or service a mortgage loan in violation of any federal law or any law of this state;

(12) To engage in practices that are dishonest or unethical in the mortgage industry;

(13) To unreasonably fail to deliver or provide information or documents promptly to the commissioner upon written request or to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information;

(14) To unreasonably fail to supervise the branches, loan officers, transitional loan officers, and employees of the mortgage broker, mortgage banker, or mortgage servicer;

(15) To fail to make payments in a timely manner from an escrow account held for the borrower to pay insurance, taxes, and other charges concerning the mortgage property without good cause, and the failure to pay results in late penalties or other negative activity;

(16) To place hazard, homeowners, or flood insurance on a mortgaged property:

(A) Without providing prior written notice to the borrower;

(B) If the mortgage servicer knows or has reason to know that adequate insurance coverage already exists; or

(C) In an amount that unreasonably exceeds the value of the insurable improvements or the last-known coverage amount or policy limits of insurance; or

(17)(A) To fail to refund to the borrower unearned premiums paid by or charged to a borrower for hazard, homeowners, or flood insurance placed by a mortgage banker or mortgage servicer if reasonable proof is available or provided that the borrower had or obtained coverage in effect resulting in the unnecessary placement of forced insurance.

(B) The borrower shall receive a refund of excess premium funds taken from the borrower when reasonable proof is provided within twelve (12) months of the forced placement.

History. Acts 2003, No. 554, § 1; 2003 (2nd Ex. Sess.), No. 26, § 2; 2005, No. 1679, § 3; 2007, No. 748, § 8; 2009, No. 164, § 11; 2009, No. 731, § 25; 2011, No. 720, § 1; 2011, No. 894, §§ 13-15; 2013, No. 1167, § 5; 2019, No. 200, §§ 22, 23.

Amendments. The 2019 amendment inserted "or transitional loan officer" in (3); and inserted "transitional loan officers" in (14).

23-39-514. Disciplinary authority.

(a) The Securities Commissioner by order may deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this subchapter or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee if the commissioner finds that:

(1) The order is in the public interest; and

(2) Any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, transitional loan officer, managing principal, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee. The person:

(A) Has filed an application for a license that as of its effective date or as of any date after filing contained any omission or statement that in light of the circumstances under which it was made is false or misleading with respect to any material fact;

(B) Has violated or failed to comply with any provision of this subchapter, any rule adopted by the commissioner, or any order of the commissioner issued under this subchapter or under Acts 1977, No. 806;

(C) Has pleaded guilty or nolo contendere to or has been found guilty in a domestic, foreign, or military court of:

(i) A felony;

(ii) An offense involving breach of trust, moral turpitude, money laundering, or fraudulent or dishonest dealing within the past ten (10) years; or

(iii) An offense involving mortgage lending, any aspect of the mortgage industry, or any aspect of the securities industry, the insurance industry, or any other activity pertaining to financial services;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage industry, the securities business, the insurance business, or any other activity pertaining to financial services;

(E) Is the subject of an order of the commissioner:

(i) Denying, suspending, revoking, restricting, or limiting that person's license as a mortgage broker, mortgage banker, mortgage servicer, loan officer, transitional loan officer, securities broker-dealer, securities agent, investment adviser, or investment adviser representative; or

(ii) Directing that person to cease and desist from an activity regulated by the commissioner, including any order entered pursuant to Acts 1977, No. 806;

(F) Is the subject of an order, including a denial, suspension, or revocation of authority to engage in a regulated activity by any other state or federal authority to which the person is, has been, or has sought to be subject, entered within the past five (5) years, including without limitation the mortgage industry;

(G) Has been found by a court of competent jurisdiction to have charged or collected any fee or rate of interest or made or brokered any mortgage loan with terms or conditions or in a manner contrary to Arkansas Constitution, Amendment 60;

(H) Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under § 23-39-505 or any bond or net worth requirements under this subchapter;

(I) Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker, mortgage banker, or mortgage servicer that has been subject to an order or injunction described in subdivisions (a)(2)(D)-(G) of this section; or

(J)(i) Has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter.

(ii) The commissioner may enter a denial order against a person under this subsection when the person has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter, but the commissioner shall vacate the order when all fees have been paid.

(b)(1) The commissioner by order may impose a civil penalty upon a licensee or any partner, officer, director, member, manager, or other person occupying a similar status or performing a similar function on behalf of a licensee for any violation of this subchapter, a rule under this subchapter, or an order of the commissioner.

(2) The civil penalty shall not exceed ten thousand dollars ($10,000) for each violation under subdivision (b)(1) of this section by a mortgage broker, mortgage banker, mortgage servicer, loan officer, or transitional loan officer.

(c)(1) The commissioner by order may summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section.

(2) Upon entering the order, the commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for issuing the order.

(3) The applicant or licensee may contest the order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the address of the licensee on file with the commissioner by first class mail, postage prepaid.

(4) The commissioner shall schedule a hearing to be held within thirty (30) days after the commissioner receives a timely written request for a hearing, unless the hearing is postponed for a reasonable amount of time at the request of the licensee.

(5) If a licensee does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.

(6) If a hearing is requested or ordered by the commissioner, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or extend it until final determination.

(d) The commissioner by summary order may cancel a license or application if the commissioner finds that a licensee or applicant for a license:

(1) Is no longer in existence;

(2) Has ceased to do business as a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer;

(3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian; or

(4) Cannot be located after a reasonable search.

(e)(1) In addition to other powers under this subchapter, upon finding that any action of a person is in violation of this subchapter, the commissioner may summarily order the person to cease and desist from the prohibited action.

(2)(A) Upon entering the order under subdivision (e)(1) of this section, the commissioner shall promptly notify the person that the order has been entered and state the reasons for the order.

(B) The person may contest the cease and desist order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the last known address of the person by first class mail, postage prepaid.

(C) The commissioner shall schedule a hearing to be held within a reasonable amount of time after the commissioner receives a timely written request for a hearing.

(D) If the person does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.

(E) If a hearing is requested or ordered, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or make it permanent.

(3)(A) A person shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation of the commissioner's cease and desist order committed after entry of the order if:

(i) The person subject to the cease and desist order fails to appeal the order in accordance with § 23-39-515 or if the person appeals and the appeal is denied or dismissed; and

(ii) The person continues to engage in the prohibited action in violation of the commissioner's order.

(B) The commissioner may file an action requesting the civil penalty under subdivision (e)(3)(A) of this section with the Pulaski County Circuit Court or any other court of competent jurisdiction.

(C) The penalties of this section apply in addition to, but not in lieu of, any other provision of law applicable to a person for the person's failure to comply with an order of the commissioner.

(f) Unless otherwise provided, any action, hearing, or other proceeding under this subchapter shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(g) If the commissioner has grounds to believe that any person has violated the provisions of this subchapter or that facts exist that would be the basis for an order against a licensee or other person, the commissioner or the commissioner's designee, at any time, may investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation.

(h)(1) The commissioner or the commissioner's designee may:

(A) Administer oaths and affirmations;

(B) Issue subpoenas to require the attendance of and to examine under oath all persons whose testimony the commissioner deems relevant to the person's business; and

(C) Issue subpoenas to require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

(2)(A) In case of contumacy by or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the commissioner, may issue an order requiring the person to appear before the commissioner or the officer designated by the commissioner, to produce documentary evidence if so ordered, or to give evidence touching the matter under investigation or in question.

(B) Failure to obey the order of the court may be punished by the court as a contempt of court.

(3)(A) The assertion that the testimony or evidence before the commissioner may tend to incriminate or subject a person to a penalty or forfeiture shall not excuse the person from:

(i) Attending and testifying;

(ii) Producing any document or record; or

(iii) Obeying the subpoena of the commissioner or any officer designated by the commissioner.

(B) However, no person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming a privilege against self-incrimination, to testify or produce evidence, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

(i)(1) From time to time and with or without cause, the commissioner may conduct examinations of the books and records of any applicant or licensee in order to determine the compliance with this subchapter and any rules adopted under this subchapter.

(2) The applicant or licensee shall pay a fee for each examination under subdivision (i)(1) of this section, not to exceed one hundred fifty dollars ($150) per examiner for each day or part of a day during which an examination is conducted.

(3) In addition, the applicant or licensee may be required to pay the actual hotel and traveling expenses of the examiner traveling to and from the office of the commissioner while the examiner is conducting an examination under subdivision (i)(1) of this section.

(j) If the commissioner finds that the managing principal, branch manager, loan officer, or transitional loan officer of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the commissioner may prohibit the managing principal, branch manager,

loan officer, or transitional loan officer from serving as a managing principal, branch manager, loan officer, or transitional loan officer for any period of time the commissioner deems appropriate.

(k) All orders shall contain written findings of fact and conclusions of law. Except for orders entered under subdivisions (c)(1) and (e)(1) of this section, before entering an order under this section, the commissioner shall provide:

(1) Prior notice to the licensee or person who is the subject of the order; and

(2) An opportunity for hearing.

(l) This section does not prohibit or restrict the informal disposition of a proceeding or allegations that might give rise to a proceeding by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

(m)(1) If it appears upon sufficient grounds or evidence satisfactory to the commissioner that any person or licensee has engaged in or is about to engage in any act or practice that violates this subchapter or any rule adopted or order issued under this subchapter or that the assets or capital of any licensee are impaired or the licensee's affairs are in an unsafe condition, the commissioner may:

(A) Refer the evidence which is available concerning violations of this subchapter or any rule or order issued under this subchapter to the appropriate prosecuting attorney or regulatory agency, that with or without the reference may institute the appropriate criminal or regulatory proceedings under this subchapter; and

(B)(i) Summarily order the licensee or person to cease and desist from the act or practice under subdivisions (c)(1) and (e)(1) of this section and apply to the Pulaski County Circuit Court to enjoin the act or practice and to enforce compliance with this subchapter or any rule or order issued under this subchapter, or both.

(ii) However, without issuing a cease and desist order, the commissioner may apply directly to the Pulaski County Circuit Court for injunctive or other relief.

(2) Upon proper showing, the court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

(3) The commissioner may also seek and upon proper showing the appropriate court shall grant any other ancillary relief that may be in the public interest, including:

(A) The appointment of a receiver, temporary receiver, or conservator;

(B) A declaratory judgment;

(C) An accounting;

(D) Disgorgement;

(E) Assessment of a fine in an amount of not more than ten thousand dollars ($10,000) for each violation; and

(F) Any other relief as may be appropriate in the public interest.

(4) The court may not require the commissioner to post a bond.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 4; 2007, No. 748, §§ 9, 10; 2009, No. 731, §§ 26, 27; 2011, No. 894, § 16; 2013, No. 1167, § 6; 2019, No. 200, §§ 24-27; 2019, No. 315, § 2501; 2021, No. 531, § 12.

Amendments. The 2019 amendment by No. 200 inserted "transitional loan officer" or "or transitional loan officer" in the introductory language of (a)(2), (a)(2)(E)(i), (b)(2), (d)(2) and three times in (j).

The 2019 amendment by No. 315 deleted "or regulation" following "rule" in the introductory language of (m)(1); and deleted "regulation" following "rule" in the introductory language of (m)(1)(A) and (m)(1)(B)(i).

The 2021 amendment substituted "an examination is conducted" for "any examiners are absent from the office of the commissioner for the purpose of conducting the examination" in (i)(2).

23-39-518. Cooperation with other regulatory agencies.

(a) The Securities Commissioner may:

(1) Enter into an arrangement, agreement, or other working relationship with federal, state, or self-regulatory authorities, the Conference of State Bank Supervisors, or a subsidiary of the Conference of State Bank Supervisors to file and maintain documents in a multistate automated licensing system or other central depository system;

(2) Waive or modify in whole or in part by rule or by order any requirement of this subchapter if necessary to implement this section; and

(3) Establish new requirements under this subchapter to carry out the purpose of this section.

(b) It is the intent of this section that the commissioner be provided the authority to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with other states and federal authorities.

(c)(1) The commissioner may permit or require initial and renewal registration filings required under this subchapter to be filed with the Conference of State Bank Supervisors, a subsidiary entity owned by the Conference of State Bank Supervisors, the Financial Industry Regulatory Authority, or another entity maintaining or operating a multistate automated licensing system.

(2) The applicant or the licensee shall pay any fee charged for the applicant or the licensee to participate in the automated licensing system.

(d) The commissioner may accept uniform procedures and forms designed to:

(1) Implement a multistate automated licensing system;

(2) Implement a uniform national mortgage lending regulatory system; or

(3) Facilitate common practices and procedures among the states.

(e)(1) If the State of Arkansas joins a multistate automated licensing system for mortgage industry participants pursuant to this section, the commissioner may require a criminal background investigation of each applicant seeking to become licensed under this subchapter as a mortgage broker, mortgage banker, mortgage servicer, loan officer, or transitional loan officer.

(2) The criminal background investigation may include a fingerprint examination and may be conducted by the Federal Bureau of Investigation, the Division of Arkansas State Police, or an equivalent state or federal law enforcement department or agency.

(3) The information obtained by the background investigation may be used by the commissioner to determine the applicant's eligibility for licensing under this subchapter.

(4) The fee required to perform the criminal background investigation shall be borne by the license applicant.

(5) Notwithstanding any other law to the contrary, information obtained or held by the commissioner under this subsection:

(A) May be disclosed when necessary in any proceeding under this subchapter;

(B) May be provided to other state agencies participating in the multistate automatic licensing system;

(C) Shall be considered privileged and confidential; and

(D) Shall not be available for examination except by the affected applicant for licensure or his or her authorized representative, or by the person whose license is subject to sanctions or his or her authorized representative.

(6) No record, file, or document shall be removed from the custody of the Identification Bureau of the Division of Arkansas State Police.

(7) Any information made available to the affected applicant for licensure or to the person whose license is subject to sanctions shall be information pertaining to that person only.

(8) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check.

(9) The commissioner may adopt rules to fully implement the provisions of this section.

History. Acts 2007, No. 748, § 11; 2009, No. 731, § 28; 2019, No. 200, § 28; 2019, No. 315, § 2502.

Amendments. The 2019 amendment by No. 200 inserted "or transitional loan officer" in (e)(1).

The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (e)(9).

CHAPTER 40

ARKANSAS PREPAID FUNERAL BENEFITS LAW

Effective Dates. Acts 2015, No. 904, § 8: Apr. 1, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that prepaid funeral organizations that are operating in this state may be in jeopardy of suffering from financial distress and may not be able to fulfill its outstanding prepaid funeral contracts; that the threat to an insured's benefits under a prepaid funeral contract is a real possibility if a prepaid funeral organization fails and that may have immense consequences; that by providing the Insurance Commissioner the authority to assist a failing or delinquent prepaid funeral organization, the insured or contract beneficiary is better protected concerning benefits; and that this act is immediately necessary because if a prepaid funeral organization fails, an insured or contract beneficiary is in danger of losing benefits or may be harmed if the prepaid funeral organization fails. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-40-103. Definitions.

As used in this chapter:

(1) "Annuity funding" means contract proceeds that are used by a seller to purchase an annuity contract that names the seller as the beneficiary of the annuity contract, the proceeds of which shall be used to pay for the funeral benefits specified in a prepaid contract, or the purchaser may elect to purchase an annuity contract directly from an insurance carrier and either name the seller as the policy beneficiary or assign the death benefits to the seller to fund the prepaid funeral benefits contract;

(2) "Cash accommodation items" means flowers, honorariums, death certificates, sales taxes, grave opening and closing, cemetery charges, and other items incidental to the funeral and disposition of the beneficiary which are to be furnished or provided by a third party at the time of death;

(3) "Contract beneficiary" means any natural person designated in a prepaid funeral benefits contract upon whose death funeral services or funeral merchandise, or both, shall be performed, provided, or delivered;

(4)(A) "Contract funding methods" means contract proceeds.

(B) "Contract funding methods" includes:

(i) Annuity funding;

(ii) Insurance funding; and

(iii) Trust funding;

(5) "Contract price" means the aggregate moneys to be paid and the aggregate stated value of all other direct or indirect consideration to be assigned by purchasers of prepaid funeral benefits as provided in the contract, exclusive of any finance charge;

(6) "Contract proceeds" means the portion of the contract price collected by the seller from a contract for the sale of prepaid funeral benefits;

(7) "Insurance funding" means contract proceeds that are used by a seller to purchase a life insurance policy or certificate on the life of a contract beneficiary that names the seller as the beneficiary of the life insurance policy or certificate, the indemnity from which shall be used to pay for the funeral benefits specified in the prepaid contract, or the purchaser may elect to purchase a life insurance policy or certificate directly from an insurance carrier, and then either name the seller as the life insurance policy beneficiary or assign the death benefits to the seller to fund the prepaid funeral benefits contract;

(8) "Licensee" or "permittee" means a person holding a valid permit or license issued pursuant to this chapter;

(9) "Liquid investments" means investments which can be sold at cost or greater, liquidated without penalty, and collected within five (5) banking days;

(10) "Net investment income" means:

(A) All revenue and earnings of the trust fund, including, but not limited to, interest, dividends, and capital gains; minus

(B) Investment expenses, trustee's fees, capital losses, and all revenue and earnings on cash accommodation funds;

(11) "Net worth" means the difference between the applicant's total assets and total liabilities as reflected in a balance sheet prepared according to accounting principles and procedures approved by the Insurance Commissioner;

(12) "Nonguaranteed prepaid contract" means a prepaid contract for the selection of merchandise or services that does not guarantee the price of the merchandise or services at the time of need;

(13) "Nonspecified prepaid contract" means a prepaid contract that:

(A) Does not select specific funeral merchandise or funeral services when the contract is executed;

(B) Permits the selection of funeral merchandise or funeral services at the time of need; and

(C) Applies contract funds to the cost of funeral merchandise or funeral services selected at the time of need;

(14)(A) "Prearrangement" means an arrangement whereby a person, for himself or herself or on behalf of some other person, makes arrangement for funeral and burial services prior to the death of the person, without consideration and without an agreement or itemization specifying any particular service or merchandise, or the cost thereof, through the assignment or transfer, including the conditions

that the assignor or transferor may choose to impose, of ownership to a licensee of an insurance policy or annuity contract, or proceeds thereof, or by the designation of a licensee as beneficiary of any such insurance policy or annuity contract.

(B) An assignment of an insurance policy or annuity or the proceeds thereof to a funeral home or the designation of a funeral home as beneficiary as described in subdivision (14)(A) of this section is not a prepaid funeral benefits contract;

(15)(A) "Prepaid funeral benefits contract" or "prepaid contract" means a contract or agreement for the prepayment and sale in this state of funeral services or funeral merchandise, including without limitation caskets, grave vaults, and all other articles of merchandise and services incidental to funeral services, at an agreed-upon price, to be delivered at an undetermined future date depending upon the death of the contract beneficiary.

(B) "Prepaid funeral benefits contract" or "prepaid contract" includes a nonguaranteed prepaid contract and a nonspecified prepaid contract.

(C) "Prepaid funeral benefits contract" or "prepaid contract" does not include a prearrangement;

(16) "Seller" means the organization selling prepaid funeral benefits or owning any interest in any contract for prepaid funeral benefits pursuant to this chapter;

(17) "Surplus" means the funds or other property in excess of the undistributed net investment income and aggregate contract proceeds held in the trust fund;

(18) "Trust funding" means the depositing of contract proceeds into a trust account by a seller until such time as the funds are needed to pay for benefits specified in the prepaid funeral benefits contract; and

(19) "Trustee" means a state or national bank or savings and loan association in this state, or, in the reasonable discretion of the commissioner upon the terms and conditions that he or she may require, a securities brokerage firm licensed and in good standing with appropriate state and federal regulatory authorities.

History. Acts 1985, No. 156, § 1; A.S.A. 1947, § 67-1713; Acts 1995, No. 852, § 1; 1997, No. 372, §§ 1-3; 2013, No. 476, §§ 1, 2; 2015, No. 904, §§ 1, 2; 2019, No. 521, § 1.

Amendments. The 2019 amendment deleted "unless the context otherwise requires" following "chapter" in the introductory language; added (1), (4), (7) and (18), and redesignated the remaining subdivisions accordingly; substituted "prepared according to accounting" for "prepared in accordance with accounting" in (11); and substituted "subdivision (14)(A) of this section" for "subdivision (11)(A) of this section" in (14)(B).

23-40-104. Arkansas Insurance Code not affected.

Except as provided in § 23-40-112(h)(2), this chapter shall not apply to any licensed insurance company or alter or affect any provisions of the Arkansas Insurance Code.

History. Acts 1985, No. 156, § 15; A.S.A. 1947, § 67-1727; Acts 1995, No. 852, § 1; 2019, No. 500, § 1.

Amendments. The 2019 amendment substituted "Except as provided in § 23-40-112(h)(2)" for "Nothing in" and inserted "not".

23-40-106. Violations — Penalties.

(a)(1) An officer, director, agent, or employee of an organization subject to this chapter who makes, or attempts to make, a contract in violation of this chapter, or refuses to allow an inspection of the organization's records shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than ten thousand dollars ($10,000), or by imprisonment in the county jail for at least six (6) months and not more than twelve (12) months, or by both fine and imprisonment.

(2)(A) An officer, director, agent, or employee of an organization is guilty of a Class D felony if the officer, director, agent, or employee:

(i) Collects contract proceeds on cash-funded prepaid funeral contracts and fails to deposit the proceeds with a trustee as required under § 23-40-114; or

(ii) Collects proceeds on insurance-funded or annuity-funded contracts, or both, and fails to forward the proceeds to the insurance company or the third-party administrator within twenty (20) business days.

(B) A person convicted of a violation of § 23-40-114 shall be ordered to pay restitution to persons aggrieved by the violation.

(C) Restitution shall be ordered in addition to a fine or imprisonment.

(b) Each violation of any provision of this chapter shall be deemed a separate offense and prosecuted individually.

(c) The Criminal Investigation Division shall have jurisdiction to investigate and prosecute any officer, director, agent, or employee of any organization who collects contract proceeds on cash-funded prepaid funeral contracts and fails to deposit such funds with a trustee as required under § 23-40-114.

History. Acts 1985, No. 156, § 13; A.S.A. 1947, § 67-1725; Acts 1999, No. 1249, § 3; 2001, No. 1043, § 1; 2017, No. 283, § 1.

Amendments. The 2017 amendment, in (a)(1), substituted "at least six (6) months" for "not fewer than six (6) months" and made stylistic changes; and rewrote (a)(2).

23-40-108. Administration.

(a) This chapter shall be administered by the Insurance Commissioner.

(b) The commissioner is authorized to prescribe reasonable rules concerning keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration of this chapter.

(c) The commissioner is authorized to employ the personnel necessary to carry out the provisions of this chapter and to fix their compensation within the amounts made available by appropriation.

(d) The commissioner may make and promulgate reasonable rules for the administration of this chapter and for the purpose of carrying out the intent hereof.

History. Acts 1985, No. 156, §§ 4, 14; A.S.A. 1947, §§ 67-1716, 67-1726; Acts 1995, No. 852, § 2; 2019, No. 315, § 2503.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b) and (d).

23-40-110. Application for initial or renewed permit.

(a) Each organization desiring to sell prepaid funeral benefits or any organization desiring to purchase an interest in or assume the liability of any contract for prepaid funeral benefits shall file an application for a permit with the Insurance Commissioner. Each initial and renewal application for a permit shall contain such information which the commissioner by rule shall reasonably prescribe.

(b) Each applicant shall, at the time of the application, pay a filing fee of three hundred dollars ($300) for the initial application and two hundred dollars ($200) for a renewal application.

(c) Permits shall expire on June 1 of each year, unless a renewal application is filed with and approved by the commissioner prior to the permit expiration date. Each organization which has discontinued the sale of prepaid funeral benefits, but which still has outstanding contracts, shall obtain a renewal of its permit until all those contracts have been performed or otherwise fully discharged. No filing fee shall be prorated.

(d)(1) Each applicant for a permit pursuant to the provisions of this chapter shall, as of a date not preceding thirty (30) days of the application date, have a net worth in an amount equal to the greater of five thousand dollars ($5,000) or three percent (3%) of the aggregate contract price of all contracts for prepaid funeral benefits outstanding and unfulfilled as of the end of the preceding calendar year, up to a maximum net worth of two hundred fifty thousand dollars ($250,000).

(2) Each applicant shall, at the time of application, file a sworn and notarized certification of net worth form stating that the applicant satisfies the net worth requirements of this chapter, in a format as prescribed by the commissioner, as evidence that the applicant has, at a minimum, the required net worth.

History. Acts 1985, No. 156, § 5; A.S.A. 1947, § 67-1717; Acts 1995, No. 852, § 4; 1997, No. 372, § 5; 2019, No. 315, § 2504.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (a).

23-40-111. Issuance of permit — Cancellation or denial.

(a)(1) The Insurance Commissioner may issue a permit conditioned upon satisfactory completion of all requirements of this chapter prior to the applicant's offering for sale or selling prepaid funeral benefits.

(2) In addition, prior to the issuance of either an initial or renewal permit, the applicant must be deemed by the commissioner to be competent, trustworthy, and financially responsible to engage in the sale of prepaid funeral contracts in this state.

(b)(1) The commissioner may deny an initial application for failure to meet the requirements of subsection (a) of this section or for the applicant's failure to comply with any material provision of this chapter or any valid rule that the commissioner has prescribed, after:

(A) Thirty (30) days' notice to the applicant or permittee setting forth the grounds for the cancellation, the denial of application for initial permit, or refusal to renew; and

(B) A hearing if the applicant or permittee requests a hearing.

(2) After notice to the licensee and after a hearing, the commissioner may suspend any permit under this chapter for up to thirty-six (36) months or may revoke or refuse to continue any permit under this chapter if the commissioner finds that:

(A) The licensee has failed to comply with any material provision of this chapter or any valid rule or order that the commissioner has prescribed;

(B) The licensee has obtained its permit through misrepresentation or fraud;

(C) An officer, director, or owner of the licensee has improperly withheld, misappropriated, or converted any moneys or properties received in the course of prepaid funeral contracts business to the licensee's own use;

(D) An officer, director, or owner of the licensee has been found to have committed any unfair trade practice or fraud during the course of prepaid funeral contracts business;

(E) The licensee has failed to provide a written response after receipt of a written inquiry from the commissioner or his or her representative as to transactions under the license within thirty (30) days after receipt thereof unless the commissioner or his or her representative knowingly waives the timely response requirement in writing;

(F) The licensee has refused to be examined or produce any of his or her accounts, records, and files for examination or has failed to cooperate with the commissioner in an investigation when requested by the commissioner or his or her representative; or

(G) The licensee is in violation of any grounds under § 23-40-114(a) sufficient to subject the organization to delinquency proceedings.

(3)(A) If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of any license, the commissioner may

impose upon the licensee an administrative penalty in the amount of up to one thousand dollars ($1,000) per violation.

(B) If the commissioner finds willful misconduct or willful violation on the part of the licensee, the commissioner may impose upon the licensee an administrative penalty of up to five thousand dollars ($5,000) per violation.

(C) In addition to either penalty imposed under subdivision (b)(3)(A) or subdivision (b)(3)(B) of this section, the commissioner may also order restitution of actual losses to affected persons.

(4) If the commissioner finds in his or her order that the public health, safety, or welfare imperatively requires emergency action, the commissioner may summarily suspend any license issued by him or her but shall promptly hold an administrative hearing regarding the suspension.

(5)(A) Upon notice and hearing, if the commissioner finds that the licensee has violated a provision of the prepaid funeral benefits laws of this state or any rule or order of the commissioner and that the licensee has previously violated provisions of the prepaid funeral benefits laws of this state or any rule or order of the commissioner, the commissioner may:

(i) Take judicial notice of previous orders against the licensee; and

(ii) Enhance or increase the penalties ordered in the current proceeding against the licensee.

(B) The commissioner may enter an order under subdivision (b)(5)(A) of this section by:

(i) The commissioner's own order; or

(ii) An order entered with the consent of the parties.

(C) The commissioner shall incorporate a finding under subdivision (b)(5)(A) of this section in any order issued under this subdivision (b)(5).

(c) Any person aggrieved by the action of the commissioner may appeal therefrom to any state court of competent jurisdiction.

History. Acts 1985, No. 156, §§ 5, 7; A.S.A. 1947, §§ 67-1717, 67-1719; Acts 1995, No. 852, § 4; 1999, No. 347, § 1; 2003, No. 987, § 1; 2019, No. 315, § 2505.

Amendments. The 2019 amendment deleted "and regulation" following "rule" in the introductory language of (b)(1) and in (b)(2)(A); and deleted "regulation" following "rule" twice in the introductory language of (b)(5)(A).

23-40-112. Prepaid funeral benefits contracts.

(a)(1) The Insurance Commissioner shall approve forms for prepaid funeral benefits contracts.

(2)(A) Except as provided in subdivision (a)(2)(B) of this section, a nonguaranteed prepaid contract or a nonspecified prepaid contract shall be approved if the prepaid contract provides the contract holder with interest or earnings during the term of the prepaid contract.

(B) If a prepaid contract is canceled under § 23-40-122, the seller may retain the accumulated interest on the deposit or the cash

surrender value of the insurance policy used to purchase the prepaid contract in excess of the amount paid by the purchaser.

(C) The commissioner by rule may establish additional requirements for a nonguaranteed prepaid contract or a nonspecified prepaid contract.

(b)(1) Prepaid funeral benefits contracts shall be in writing.

(2) A prepaid contract for specified benefits shall set forth the specific merchandise and services to be provided by the seller and the prepaid contract price.

(3)(A) A nonguaranteed prepaid contract for specified benefits shall state that the prepaid contract is not guaranteed.

(B) A nonguaranteed prepaid contract may:

(i) State the specific merchandise and services to be provided by the seller; and

(ii) Name the prepaid contract price.

(c)(1) All forms for prepaid funeral benefits contracts shall contain the provisions incidental to the orderly administration of this chapter as set forth in the rules prescribed by the commissioner.

(2) A prepaid contract form shall not be used without prior approval of the commissioner.

(d)(1)(A) A seller of a prepaid contract for specified benefits shall furnish to the buyer the merchandise and services as stated in the prepaid contract at the prepaid contract price regardless of the cost of the merchandise or services at the date of the contract beneficiary's death.

(B) A nonguaranteed prepaid contract shall state that the prepaid contract price is not guaranteed.

(2)(A) However, the seller shall not be required to furnish at the prepaid contract price other items incidental to the funeral and disposition of the beneficiary that are clearly identified in the prepaid contract as cash accommodation items.

(B) The seller may charge the difference between the cash accommodation fund balance, including accrued interest, and the market price of the cash accommodation items as of the date of the beneficiary's death.

(C) If the total funds on deposit exceed the market price of the cash accommodation items, the seller shall return the excess to the buyer or his or her estate.

(e) The seller shall not be entitled to enforce a prepaid contract made in violation of this chapter, but the purchaser, or his or her heirs, or his or her legal representative shall be entitled to recover all amounts paid to the seller under any prepaid contract made in violation of this chapter.

(f)(1) This chapter does not prohibit the assignment or transfer of insurance contracts as consideration for prepaid funeral benefits furnished in accordance with this chapter or the designation of an organization licensed pursuant to this chapter as beneficiary of a funeral expense or other insurance policy.

(2) Such an assignment, transfer, or designation shall not be deemed to be a prepaid contract.

(g) The prepaid contract shall contain a provision in substantially the following form:

"NOTICE: If this contract is irrevocable and you choose to transfer this contract to a substitute provider, the entire amount of the contract will not be transferred, the seller may collect a fee that includes the cost of transferring the contract, and you may have to pay more to obtain 100% of the services provided for in the contract."

(h)(1) Each seller shall provide advance written notice to the prepaid contract purchaser that the seller intends to procure a single payment whole life insurance policy or annuity on the contract beneficiary to fund the prepaid funeral benefit contract for less money than the total amount of the cash payment if:

(A) The prepaid funeral benefits contract was originally intended by the contract purchaser to be fully paid in cash; and

(B) The amount of the single premium payment to the insurer by the seller is less than the cash payment provided to the seller by the contract purchaser.

(2)(A) Within three (3) business days from the receipt of a notification of death of a contract beneficiary and a request for verification of benefits by an owner, beneficiary, or assignee, or the authorized representative of the owner, beneficiary, or assignee, an insurer shall verify the benefits for a contract beneficiary under a whole life insurance policy or annuity.

(B) The verification of benefits under subdivision (h)(2)(A) of this section shall include without limitation:

(i) Whether the deceased is a covered person under the policy or annuity;

(ii) The death benefit amount under the policy or annuity; and

(iii) Whether the policy or annuity is in the contestability period.

(C) The commissioner shall promulgate rules regarding verification of benefits under subdivision (h)(2)(A) of this section.

(D) The commissioner may impose a fine not to exceed five hundred dollars ($500) for each failure to provide the verification required under this subdivision (h)(2) and not more than five thousand dollars ($5,000) in the aggregate.

History. Acts 1985, No. 156, §§ 2, 4; A.S.A. 1947, §§ 67-1714, 67-1716; Acts 1995, No. 852, §§ 4, 12; 2003, No. 987, § 3[2]; 2013, No. 476, § 3; 2015, No. 880, § 1; 2015, No. 904, §§ 3-5; 2019, No. 500, § 2.

Amendments. The 2019 amendment redesignated (h) as (h)(1) and former (h)(1) and (h)(2) as (h)(1)(A) and (h)(1)(B); and added (h)(2).

23-40-114. Trust funds — Creation — Deposits, withdrawals, and transfers of funds.

(a) All contract proceeds collected under contracts for prepaid funeral benefits, including funds collected under contracts entered into

before June 28, 1985, shall be deposited with a trustee within twenty (20) business days after receipt of proceeds, to be held, invested, and administered in a trust fund for the benefit and protection of the contract purchasers pursuant to this chapter.

(b) Each trust fund shall be created by a letter or written agreement which shall be filed with and approved by the Insurance Commissioner prior to placement of funds.

(c) The seller may deposit money or property as surplus at any time.

(d) The commissioner shall prescribe by regulation proper affidavits and forms for the withdrawal of funds from the trust fund.

(e) The commissioner shall first approve and authorize in writing any transfer of funds from an existing trustee to a proposed new trustee if the proposed new trustee meets the requirements of this chapter and the rules promulgated thereunder.

(f) The licensee shall file a request for a transfer of funds, together with a filing fee of two hundred fifty dollars ($250), and any other information required by rule.

(g) This section shall not apply to the proceeds of insurance policies or contracts, and it shall not be necessary to establish a trust for the payment of such proceeds to the beneficiary designated in the policy or contract or the assignee or transferee thereof.

(h) [Repealed.]

History. Acts 1985, No. 156, § 8; A.S.A. 1947, § 67-1720; Acts 1995, No. 852, § 6; 1997, No. 372, § 7; 2001, No. 1043, § 3; 2003, No. 987, § 4[3]; 2015, No. 904, § 6; 2019, No. 315, § 2506.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (e), and deleted "or regulation" following "rule" in (f).

23-40-115. Trust funds — Investments.

(a) The trustees shall invest the trust fund only in the following:

(1) Demand deposits, savings accounts, certificates of deposit, and all other accounts that are insured by the Federal Deposit Insurance Corporation;

(2) Bonds and obligations that are insured by, fully guaranteed as to principal and interest by, and due from the United States Government or any of its agencies, including the Federal National Mortgage Association and the Government National Mortgage Association, and any repurchase obligations that are secured by any of the foregoing;

(3) The following bonds or obligations:

(A)(i) Corporate, state, municipal, or political subdivision bonds or obligations that at the time of purchase are rated A or better by Moody's Investors Service, Inc. or A or better by Standard & Poor's rate services.

(ii) The Insurance Commissioner by rule may permit the continued investment in a bond purchased in compliance with subdivision (a)(3)(A)(i) of this section that is subsequently downgraded for the time and in the amounts established by the commissioner; and

(B)(i) Bonds of any school district in this state.

(ii) However, no more than thirty percent (30%) of the total trust assets may be invested in such school district bonds; and

(4)(A) Mutual funds or common trust funds whose portfolio is made up of investments that are described in subdivisions (a)(1)-(3) of this section.

(B) Investments described in subdivisions (a)(2) and (3) and subdivision (a)(4)(A) of this section shall be purchased and held by the trustee that has trust powers under a trust agreement filed with and approved by the commissioner.

(b) The trustee shall maintain the trust fund in a manner consistent with the following investment policies:

(1) The trust fund shall contain at all times liquid investments having a cost basis not less than thirty percent (30%) of the total contract proceeds disbursed from the trust fund as described in § 23-40-116(1)-(3) during the preceding calendar year;

(2)(A) An investment shall not be sold, exchanged, or liquidated at less than its cost if it would result in the aggregate cost basis of the trust fund minus undistributed net investment income being less than the aggregate amount of contract proceeds held in the trust fund.

(B) However, this prohibition shall not apply if the seller contemporaneously deposits with the trustee a sum of money or other property in an amount equal to the loss realized upon the sale, exchange, or liquidation of the investment;

(3)(A) For cash-funded trust contracts, the portion of the contract proceeds collected for cash accommodation items pursuant to the terms of a contract shall be deposited into a separate account which shall be clearly identified as "cash accommodation funds" and shall state the name of the contract buyer.

(B) All income earned on the cash accommodation funds shall become a part of the principal of the respective accounts; and

(4) For insurance-funded or annuity-funded contracts, if nonguaranteed cash accommodation items are included in the contract total, the entire amount may be included in the purchase premium of the insurance or annuity policy used to fund the contract if a proration calculation is used to identify the portion of the accrued interest income that is associated with the nonguaranteed portion of the contract.

History. Acts 1985, No. 156, § 8; A.S.A. 1947, § 67-1720; Acts 1993, No. 406, § 1; 1995, No. 852, § 7; 2013, No. 476, §§ 4, 5; 2017, No. 283, § 2; 2019, No. 391, § 3.

Amendments. The 2017 amendment deleted (b)(1) and redesignated the remaining subdivisions accordingly; added the (A) and (B) designations in (b)(2) and (3); added "For cash-funded trust contracts" in (b)(3)(A); added present (b)(4); and made stylistic changes.

The 2019 amendment redesignated (a)(1) as (a), and redesignated the remaining subdivisions in (a) and internal references accordingly; deleted "or the Federal Savings and Loan Insurance Corporation" from the end of (a)(1); added the introductory language in (a)(3); inserted "Investors Service, Inc." in (a)(3)(A)(i), substituted "and" for "or" at the end of (a)(3)(ii); in (a)(3)(B)(ii), deleted "Provided" from the

beginning and inserted "district" preceding "bonds"; and rewrote (a)(4)(B).

23-40-116. Trust funds — Disbursements.

The trustee shall disburse money or other property from the trust fund only as follows:

(1) Upon the death of the contract beneficiary and upon proper proof and documentation being submitted to and approved by the Insurance Commissioner, or pursuant to such other method as may be permitted under valid rules adopted by the commissioner, in which event the contract proceeds shall be paid to the seller;

(2) Upon cancellation of the prepaid contract pursuant to § 23-40-122 and upon proper proof and documentation being submitted to and approved by the commissioner, or pursuant to such other method as may be permitted under valid rules adopted by the commissioner;

(3) Upon the breach of contract by either party, in which event the contract proceeds shall be paid according to a judgment of a court of competent jurisdiction; or

(4) Upon the withdrawal of net investment income or surplus by the seller, which may be made at any time and from time to time.

History. Acts 1985, No. 156, § 8; A.S.A. 1947, § 67-1720; Acts 1995, No. 852, § 8; 2019, No. 315, § 2507.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (1) and (2).

23-40-119. Annual report and fee.

(a) Each organization shall file an annual report and an annual report fee with the Insurance Commissioner on or before March 15 of each year in such form as the commissioner may require, showing the:

(1) Names or account numbers, or both, of all persons with whom contracts for prepaid funeral benefits have been made prior to January 1 of that year that had not been fully discharged on January 1;

(2) Date of contract;

(3) Name of the trustee holding the trust fund; and

(4) Amount in the trust fund under each contract on the preceding December 31.

(b) If any officer of any organization fails or refuses to file an annual report or to cause it to be filed within thirty (30) days after he or she has been notified by the commissioner that the report is due and has not been received, then, upon a finding of such failure by a court of competent jurisdiction, he or she shall be guilty of a violation.

(c)(1) Effective on and after March 15, 1997, the annual report fee shall be based on the total amount of aggregate contracts for prepaid funeral benefits outstanding and unfulfilled as of December 31 of each year and shall be payable at the time the annual report is filed.

(2) The fee shall be based on the following schedule and shall be payable to the State Insurance Department Prepaid Trust Fund:

AGGREGATE AMOUNT OF OUTSTANDING PREPAID FUNERAL BENEFITS CONTRACTS IN ARKANSAS	ANNUAL FEE DUE STATE OF ARKANSAS
Up to $250,000	$200.00
Over $250,001 to $500,000	$250.00
$500,001 to $1,000,000	$500.00
$1,000,001 to $2,500,000	$1,000.00
$2,500,001 to $5,000,000	$2,000.00
$5,000,001 to $10,000,000	$3,000.00
$10,000,001 to $20,000,000	$4,000.00
$20,000,001 to $40,000,000	$5,000.00
Over $40,000,001	$6,000.00

(d)(1)(A)(i)*(a)* Effective for all prepaid funeral benefits contracts executed on and after April 1, 1997, each licensee selling a prepaid funeral benefits contract shall remit to the State Insurance Department a one-time, per-contract fee of not less than five dollars ($5.00) for each prepaid funeral benefits contract, including any amendments thereto, entered into by the licensee, whether cash or trust funded or funded by an insurance policy or annuity contract, unless the per-contract fees are otherwise eliminated or suspended by the commissioner pursuant to a rule.

(b) However, the per-contract fees once eliminated or suspended by rule of the commissioner may be reinstated by subsequent rule of the commissioner adopted upon a public hearing at a later date upon the commissioner's determination that these fees are essential and necessary to the operation of the Division of Prepaid Funeral Benefits of the State Insurance Department.

(ii) On and after July 1, 2001, the commissioner shall then transfer from each per-contract fee remitted to the department, into the Prepaid Funeral Contracts Recovery Program Fund pursuant to this act a portion of the fee in an amount to be determined by rules of the commissioner and thereafter to be administered by the commissioner with advice from the Prepaid Funeral Contracts Recovery Program Board, pursuant to the provisions of this subchapter.

(B) The per-contract fees shall be remitted quarterly to the department for each quarter of the calendar year with a quarterly fee form as prescribed by the commissioner.

(C) The fees shall be remitted to the department no later than forty-five (45) days after each quarter.

(2)(A)(i) On and after July 1, 2001, the commissioner may by rule eliminate, reduce, suspend, or increase the per-contract fee or the portion of the per-contract fee allotted to the Prepaid Funeral Contracts Recovery Program Fund.

(ii) The per-contract fee may be charged to the purchaser of the contract.

(B) Any fee so charged and collected shall not be included in the term "contract proceeds" as defined in § 23-40-103(6) and shall not be subject to the deposit requirements of § 23-40-114(a).

(e)(1) Absent the commissioner's approval of an extension for good cause shown, licensees failing to timely report and pay any administrative and financial regulations fees to the State Insurance Department Prepaid Trust Fund may be subject to a penalty of up to one hundred dollars ($100) per day for each day of delinquency, payable to the State Insurance Department Prepaid Trust Fund.

(2) The commissioner shall deposit all administrative and financial regulation fees and any penalties assessed under this section directly into the fund as special revenues.

(f)(1) Notwithstanding the provisions of § 23-40-107, if there are any unused funds from fees collected from organizations under subsections (c) and (d) of this section not disbursed for personal services, operating expenses, maintenance and operations, and support and improvements for the Division of Prepaid Funeral Benefits, such excess funds, if any, may be transferred to the Prepaid Funeral Contracts Recovery Program Fund to provide reparations to purchasers of prepaid funeral contracts who have purchased cash-funded prepaid funeral contracts from organizations that have been:

(A) Declared insolvent by a state or federal court of competent jurisdiction; or

(B) Determined by either the commissioner or a state or federal court of competent jurisdiction to have fund account deficiencies.

(2) Purchasers of prepaid funeral contracts requesting any discretionary relief from the Prepaid Funeral Contracts Recovery Program Fund after July 1, 2001, may include the contract holder or his or her surviving family representative or such other person as described in rules of the department.

(3) The commissioner may by rule describe the procedures, claim forms, qualifications, and process of filing a claim for aggrieved purchasers desiring to make a claim for reparations from any excess funds.

(4) No purchaser is provided in this section with any administrative right or legal or equitable right to any funds collected from fees collected under this section to satisfy any judgment or economic loss of the purchaser from a prepaid funeral organization, except to the extent that the commissioner, in his or her discretion, has set aside funds to provide discretionary relief to purchasers of prepaid funeral contracts from insolvent prepaid funeral organizations or those organizations with trust fund account shortages, and subject to limits of the Prepaid Funeral Contracts Recovery Program Fund and the claimant's actual contract payments made, excluding additional damages or interest or other equitable relief, or noneconomic damages.

History. Acts 1985, No. 156, § 11; A.S.A. 1947, § 67-1723; Acts 1995, No. 852, § 11; 1997, No. 372, §§ 8, 9; 1999, No. 1249, § 1; 2001, No. 1043, §§ 5, 6; 2005, No. 1994, § 152; 2017, No. 283, § 3; 2019, No. 315, §§ 2508, 2509.

Amendments. The 2017 amendment, in (e)(1), inserted "up to" and substituted

"State Insurance Department Prepaid Trust Fund" for "fund" following "payable to the".

The 2019 amendment deleted "or regulation" following "rule" in (d)(1)(A)(i)*(a)* and in (d)(2)(A)(i); deleted "and regulation" following "rule" in (d)(1)(A)(i)*(b)* and (f)(3); and deleted "and regulations" following "rules" in (d)(1)(A)(ii) and (f)(2).

23-40-122. Cancellation or transfer.

(a) A purchaser may cancel or transfer a prepaid contract under this section, whether revocable or irrevocable, or whether cash-funded or funded by insurance or an annuity, at any time before performance of the contract by the seller, under the following conditions:

(1) In the case of a cash-funded or trust-funded prepaid contract:

(A) Before the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser is entitled to receive a refund of not less than one hundred percent (100%) of all sums paid to the seller by the purchaser, not to exceed the contract price;

(B) After death, if the prepaid contract is revocable, the purchaser or his or her representative is entitled to receive one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price; or

(C) If the prepaid contract is irrevocable, the purchaser shall not have the right to a refund of any funds paid by him or her or proceeds paid to the seller but shall have the right to change the provider of the contract services and merchandise to a substitute provider, in which event the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price;

(2) In the case of a prepaid contract funded by life insurance:

(A) Before the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser shall have the right to receive not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid contract, not to exceed the premium paid by the purchaser;

(B) After the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser or his or her designee is entitled to receive not less than one hundred percent (100%) of the policy proceeds paid to the seller, not to exceed the original face amount of the policy; or

(C)(i) Before the death of the contract beneficiary, if the contract is irrevocable, the prepaid contract purchaser shall not have the right to a refund of any funds paid to the seller but shall have the right to change the provider of the prepaid contract services and merchandise to a substitute provider, in which event the seller shall assign or transfer to the substitute provider, as directed by the contract owner, the life insurance policy used to fund the prepaid contract or funds in an amount not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid contract, not to exceed the premium paid by the purchaser.

(ii) After the death of the contract beneficiary, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the policy proceeds paid to the seller, not to exceed the original face amount of the policy; or

(3) In the case of a prepaid contract funded by an annuity:

(A) Before the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser is entitled to receive a refund of not less than one hundred percent (100%) of the annuity value, not to exceed the premium paid by the purchaser for the annuity funding the prepaid contract;

(B) After the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser or his or her designee is entitled to receive not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premium paid by the purchaser; or

(C)(i) Before the death of the contract beneficiary, if the prepaid contract is irrevocable, the purchaser shall not have the right to a refund of any funds paid to the seller but shall have the right to change the provider of the prepaid contract services and merchandise to a substitute provider, in which event the seller shall assign or transfer to the substitute provider, as directed by the contract owner, the annuity policy used to fund the prepaid contract, which shall be in an amount of not less than one hundred percent (100%) of the annuity value, not to exceed the premium paid by the purchaser.

(ii) After the death of the contract beneficiary, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premiums paid by the purchaser.

(b)(1) A seller or funding life insurance company may collect a fee for the transfer or cancellation of a prepaid contract to a substitute provider.

(2) The Insurance Commissioner by rule shall establish the fee for a transfer or cancellation of a prepaid contract under subdivision (b)(1) of this section.

(c)(1)(A) In the case of cancellations, reassignments, or transfers, a seller is entitled to retain any accrued interest income on a cash-funded prepaid funeral benefits contract that is being transferred to a substitute provider.

(B) On an insurance-funded or annuity-funded prepaid funeral benefits contract that is being transferred to a substitute provider, a seller shall be entitled to retain any accrued interest income on the policy used to fund the insurance-funded or annuity-funded prepaid funeral benefits contract from the policy inception date up to the reassignment or transfer date.

(2) A substitute provider shall be entitled to retain any accrued interest income on the funding mechanism from the completion date of the reassignment or transfer.

History. Acts 1995, No. 852, § 12; 2003, No. 987, § 5[4]; 2015, No. 880, § 2; 2019, No. 521, § 2.

Amendments. The 2019 amendment added (c).

23-40-123. Delinquency proceedings.

(a) If it appears upon sufficient grounds or evidence satisfactory to the Insurance Commissioner that a person or a licensee has engaged in or is about to engage in an act or a practice that violates this chapter or a rule adopted or an order issued under this chapter or that the assets or capital of a licensee are impaired or the licensee's affairs are in an unsafe condition, then the commissioner may order summarily a person or a licensee to cease and desist and take control of and administer the prepaid funeral benefits contracts business operations of a licensee that sells prepaid funeral benefits, if the commissioner finds:

(1) It is in the public interest necessary to ensure the orderly and proper handling of outstanding prepaid funeral benefits contracts to protect the interest and rights of active contract holders upon a revocation, suspension, or a lapse of a prepaid funeral benefits permit;

(2) It is necessary to prevent loss, waste, dissipation, theft, or conversion of assets that are required by law to be held and used for the benefit and protection of the purchasers of prepaid funeral benefits contracts under this chapter;

(3) The seller failed to deposit or remit moneys according to § 23-40-114(a);

(4) The seller has misappropriated, converted, illegally withheld, or refused to pay on demand any moneys entrusted to the seller that belong to a beneficiary under a prepaid funeral benefits contract; or

(5) The seller refused an examination by the commissioner.

(b)(1) If the commissioner determines that immediate action is required to protect the public health, safety, or welfare of the holders of the prepaid funeral benefits contracts, the commissioner may issue an order to a licensee to cease and desist prepaid funeral benefits contracts operations.

(2) An order issued under subdivision (b)(1) of this section shall:

(A) State the findings that the commissioner relied upon that required emergency action; and

(B) Provide the licensee with a reasonable amount of time as determined by the commissioner to respond or appeal an order issued under subdivision (b)(1) of this section.

(3) A licensee and any named party immediately shall be served with notice and a copy of the order.

(4) The order issued under subdivision (b)(1) of this section may:

(A) Direct the commissioner or his or her designee to take possession, custody, and control of the property, books, accounts, documents, and other records of the licensee as to its prepaid funeral benefits contracts operations; or

(B) Require the commissioner or his or her designee to limit the disruption to the operations of the licensee by:

(i) Prohibiting a licensee from making a disbursement or withdrawal from the licensee's trust fund;

(ii) Making a disbursement from the trust fund for any valid claim;

(iii) Procuring a substitute provider that is licensed under this chapter to service the prepaid funeral benefits contracts;

(iv) Terminating or modifying a trust fund agreement; or

(v) Authorizing the commissioner to bring and prosecute a suit in the name of the commissioner that may be necessary to collect debts or preserve assets and property for the benefit of creditors and any interested person.

(5) The commissioner shall maintain control of the licensee until the order is modified or vacated by the commissioner.

(6) The commissioner may order a licensee to relinquish any property of the licensee in connection with prepaid funeral benefits contracts to the State Insurance Department.

(c) The commissioner may apply to a court of competent jurisdiction for an order to appoint him or her, in an official capacity, as receiver of the licensee to conserve, rehabilitate, or liquidate a prepaid funeral benefits contract, if:

(1) A licensee:

(A) Has not maintained trust funds from prepaid funeral benefit contracts under § 23-40-114;

(B) Is impaired or insolvent;

(C) Refuses to submit its books, records, accounts, or affairs to an examination by the commissioner;

(D) Has refused to be examined under oath concerning the affairs of the licensee or any officer, director, or manager of the licensee refuses to be examined; or

(E) Has failed to file the licensee's annual report within the time and according to the insurance laws of this state and does not have an adequate explanation for failure to file the annual report after written demand by the commissioner; or

(2) The commissioner has reasonable cause to believe that there has been embezzlement, misappropriation, or other wrongful misapplications or use of trust funds or fraud affecting the ability of the licensee to perform its obligations under prepaid funeral benefits contracts sold or assumed by the licensee.

(d) Circuit courts shall have original jurisdiction of all delinquency proceedings under this chapter, and any such court is authorized to make all necessary or appropriate orders to carry out the purposes of this chapter.

(e) The venue of delinquency proceedings against a licensee shall be in the Pulaski County Circuit Court.

(f) Delinquency proceedings instituted under this chapter shall not constitute the sole and exclusive method of liquidating, rehabilitating, or conserving a licensee, and a court shall not entertain a petition for the commencement of such proceedings unless the petition is filed in the name of the state on the relation of the commissioner.

(g)(1) The commissioner shall commence any such proceeding by application to the court for an order directing the licensee to show cause why the commissioner should not have the relief prayed for in the application.

(2) On the return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the prepaid contracts purchaser, contract beneficiaries, or the public may require.

(h) An appeal shall lie to the Supreme Court from an order granting or refusing rehabilitation, liquidation, or conservation, and from every other order in delinquency proceedings having the character of a final order as to the particular portion of proceedings embraced therein.

History. Acts 1997, No. 372, § 10; 2015, No. 904, § 7.

23-40-125. Prepaid Funeral Contracts Recovery Program Fund — Created — Prepaid Funeral Contracts Recovery Program Board — Established.

(a) There is established within the State Insurance Department Prepaid Trust Fund an account to be known as the "Prepaid Funeral Contracts Recovery Program Fund", hereinafter "fund".

(b) No money is to be appropriated from this fund for any purpose except for expenses and payment of claims of the Prepaid Funeral Contracts Recovery Program at the direction of the Insurance Commissioner and the Prepaid Funeral Contracts Recovery Program Board.

(c) The fund shall be invested under the direction of the commissioner and the Treasurer of State, with advice from the Chief Fiscal Officer of the State as needed from time to time.

(d)(1) All income derived through investment of the fund, including, but not limited to, fees, interest, and dividends shall be credited as investment income to the fund and deposited therein.

(2) All income derived from fund transfers, subrogation awards, grants, orders or judgments of restitution, refunds, voluntary reimbursements or restitution, and gifts shall be credited as investment income to the fund and deposited therein.

(e) Further, all moneys deposited into the fund shall not be subject to any deduction, tax, levy, or any other type of assessment except as may be provided in this subchapter.

(f)(1) The fund shall be administered by the commissioner, with advice from the Prepaid Funeral Contracts Recovery Program Board, hereinafter "board".

(2) The purpose of the fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the impairment, insolvency, business interruption, or improper inactivity of a prepaid funeral organization licensed in this state under this chapter.

(g)(1) From the fee for each preneed funeral contract as required by § 23-40-119(d)(1)(A) and from any funds transferred to the fund pur-

suant to § 23-40-119(f)(1), the commissioner with board advice and consultation shall administer the Prepaid Funeral Contracts Recovery Program.

(2) The commissioner may suspend fees or unused funds transfers or deposits into the fund at any time and for any period for which the commissioner determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve in compliance with a rule of the commissioner.

(h) The commissioner with board assistance shall adopt procedures governing management of the fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(i)(1) The commissioner may expend moneys in the fund for the following purposes:

(A) To make reimbursements on approved applications; and

(B) To pay related expenses involved in operating the program as permitted under state law.

(2) Reimbursements from the fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected, or reimbursed, and only after the applicant has complied with all applicable rules of the fund.

(j)(1) The commissioner shall investigate all applications made and may reject or allow the claims, in whole or in part, to the extent that moneys are available in the fund.

(2) The commissioner may approve one (1) application that includes more than one (1) reparation claim for the benefit of purchasers of prepaid contracts of a licensee ordered liquidated under § 23-40-123, as part of a plan to arrange for another licensee to assume the obligations of the licensee being liquidated, if:

(A) The commissioner finds that the plan is reasonable and is in the best interests of the contract beneficiaries; and

(B) The plan is approved by a court.

(k)(1) In the event reimbursement is made to an applicant under this section, the commissioner, on behalf of the state, shall be subrogated in the reimbursed amount and may bring any action the commissioner deems advisable for the program against any person, including a prepaid licensee.

(2) The commissioner may enforce any claims that the program, on behalf of the state, may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants, and any other persons that the commissioner deems appropriate. Payments shall be made from the fund for such services.

(l)(1) There is created the Prepaid Funeral Contracts Recovery Program Board.

(2)(A) Members of the board shall consist of no fewer than five (5) nor more than nine (9) members of various licensed Arkansas prepaid funeral organizations, including one (1) consumer member selected from the Arkansas public at large.

(B) The members of the board shall be selected by member licensees, subject to approval of the commissioner.

(C)(i) Each member of the board may serve up to two (2) consecutive four-year terms.

(ii) Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to approval of the commissioner.

(D) In approving selections to the board, the commissioner shall consider, among other things, whether all member licensees are fairly represented.

(m)(1) The board shall assist the commissioner and come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the laws of this state.

(2) The fund, as well as board action, shall be subject to examination and regulation by the commissioner.

(3)(A) The board shall prepare and submit to the commissioner each year, not later than one hundred twenty (120) days after the program's fiscal year, a financial report in a form approved by the commissioner and a report of program activities during the preceding fiscal year.

(B) Upon request of a licensed prepaid funeral organization in this state, the commissioner shall provide the member prepaid funeral organization with a copy of the report.

(n) There shall be no liability on the part of and no cause of action of any nature shall arise against any member of the board, the commissioner, or his or her representatives, agents, or employees for any act or omission by them in the performance of their powers and duties under this chapter, or in its administration, dispensation, handling, or collection of funds for the program.

History. Acts 2001, No. 1043, § 7; 2003, No. 987, § 6[5]; 2003, No. 1473, § 50; 2019, No. 315, § 2510.

Amendments. The 2019 amendment deleted "and regulation" following "rule" in (g)(2).

CHAPTER 42

ARKANSAS SECURITIES ACT

SUBCHAPTER.

1. General Provisions.
2. Administration.
3. Broker-Dealers, Agents, and Investment Advisers.
4. Registration of Securities.
5. Regulation of Transactions.

Subchapter 1 — General Provisions

RESEARCH REFERENCES

ALR. Heightened Pleading Requirements for Alleging Securities Fraud-Post-Iqbal/Twombly — First Circuit Cases. 31 A.L.R. Fed. 3d Art. 11 (2018).

23-42-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1)(A) "Agent" means an individual, other than a broker-dealer, who:

(i) Represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities; or

(ii) Supervises individuals who effect or attempt to effect purchases or sales of securities for a broker-dealer.

(B) "Agent" does not include an individual who represents:

(i) An issuer in:

(a) Effecting transactions in a security exempted by § 23-42-503(a)(1)-(4) or (a)(8) and any other transactions in a security exempted by other subdivisions or subsections of § 23-42-503 which the Securities Commissioner may by rule or order prescribe;

(b) Effecting transactions exempted by § 23-42-504 unless otherwise required by § 23-42-504;

(c) Effecting transactions in covered securities exempted by:

(1) Section 18(b)(3) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(3), concerning sales to qualified purchasers;

(2) Section 18(b)(4)(E) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(E), concerning sales of securities exempt under section 3(a) of the Securities Act of 1933, 15 U.S.C. § 77c(a); or

(3) Rule or order of the commissioner;

(d) Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(e) Effecting transactions involving a reorganization or any other individual assisting the issuer or any other constituent party in the process of the reorganization, so long as the individual is not employed for the primary purpose of obtaining or soliciting proxies, consents, or other required means of approval from the security holders of the issuer or any other constituent party to the reorganization and receives no compensation other than his or her regular salary and reimbursement for actual expenses, if any, incurred in good faith in the course of such duties or activities;

(ii) A broker-dealer in effecting a transaction for a customer in this state if:

(a) Such a transaction is effected on behalf of a customer that, for thirty (30) days prior to the day of the transaction, maintained an account with the broker-dealer;

(b) The individual is not ineligible to register with this state for any reason;

(c) The individual is registered with a registered securities association and at least one (1) state;

(d) The broker-dealer with which the individual is associated is registered with this state;

(e)(1) The transaction is effected by the individual:

(A) To which the customer was assigned for fourteen (14) days prior to the day of the transaction; and

(B) Who is registered with a state in which the customer was a resident or was present for at least thirty (30) consecutive days during the one-year period prior to the transaction. Except that, if the customer is present in this state for thirty (30) or more consecutive days or has permanently changed his or her residence to this state, this subdivision (1)(B)(ii) shall not be applicable unless the individual files with the commissioner an application for registration within ten (10) calendar days of the later of the date of the transaction or the date of the discovery of the presence of the customer in this state for thirty (30) or more consecutive days or the change in the customer's residence.

(2) For purposes of subdivision (1)(B)(ii)*(e)(1)(B)* of this section, each of up to three (3) individuals who are designated to effect transactions during the absence or unavailability of the assigned individual for a customer may be treated as such an assigned individual; and

(f) The transaction is effected within the period beginning on the date on which the individual files with the commissioner an application for registration and ending on the earlier of:

(1) Sixty (60) days after the date the application is filed; or

(2) The time at which the commissioner notifies the individual that he or she has denied the application for registration or has stayed the pendency of the application for cause; or

(iii) A person who is a registered broker-dealer in a state other than Arkansas who does not:

(a) Have a place of business in this state; and

(b) Effect securities transactions with more than three (3) persons in this state during any period of twelve (12) consecutive months as described in subdivision (3)(B)(iv) of this section.

(C) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition;

(2)(A) "Branch office" means any location other than the main office of a broker-dealer or investment adviser where an agent or representative regularly conducts business on behalf of the broker-dealer or investment adviser.

(B) "Branch office" includes a location that is held out as an office where an agent or representative regularly conducts business on behalf of a broker-dealer or investment advisor.

(C) "Branch office" does not include:

(i) A location that is established solely for customer service or back-office-type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) A location that is the primary residence of the agent or representative if:

(a) Only agents or representatives who reside at the location and are members of the same immediate family conduct business at the location;

(b) The location is not held out to the public as an office and the agent or representative does not meet with customers at the location;

(c) Neither customer funds nor securities are handled at the location;

(d) The agent or representative is assigned to a designated branch office and the designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the agent or representative;

(e) The correspondence of the agent or representative and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which the agent or representative is associated;

(f) Electronic communications, including email, are made through the electronic system of the broker-dealer or investment adviser;

(g) All orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer that is reviewable at the branch office;

(h) Written supervisory procedures pertaining to supervision of activities conducted at the residence are maintained by the broker-dealer or investment adviser; and

(i) A list of the residence locations is maintained by the broker-dealer or investment adviser;

(iii)*(a)* A location other than a primary residence that:

(1) Is used for a securities or investment advisory business for less than thirty (30) business days in any one (1) calendar year; and

(2) Satisfies the requirements of subdivisions (2)(C)(ii)*(b)-(h)* of this section.

(b) As used in this subdivision (2)(C)(iii), "business day" does not include a day in which the agent or representative spends at least four (4) hours at the designated branch office of the agent or representative during the hours that the designated branch office is normally open for business;

(iv) An office of convenience that is not held out to the public as an office where associated persons occasionally and exclusively by appointment meet with customers;

(v) A location that is used primarily to engage in nonsecurities activities and from which the agent or representative effects no more

than twenty-five (25) securities transactions in any one (1) calendar year, if any advertisement or sales literature identifying the location also provides the address and telephone number of another location from which the agent or representative conducting business at the location is directly supervised;

(vi) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; or

(vii) A temporary location established in response to the implementation of a business continuity plan;

(3)(A) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for his or her own account.

(B) "Broker-dealer" does not include:

(i) An agent;

(ii) An issuer;

(iii) A bank, savings institution, savings and loan association, or trust company;

(iv) A person that has no place of business in this state if:

(a) The person effects transactions in this state exclusively with or through:

(1) The issuers of the securities involved in the transactions;

(2) Other broker-dealers; or

(3) Banks, savings institutions, savings and loan associations, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(b) The person:

(1) Is registered under the securities law of the state in which it has a principal place of business;

(2) Is registered or not required to be registered as a broker-dealer under the Securities Exchange Act of 1934; and

(3) Does not effect transactions with more than three (3) persons in this state during any period of twelve (12) consecutive months other than transactions with:

(A) The issuer of a security involved in the transaction;

(B) Another broker-dealer; or

(C) A bank, a savings institution, a savings and loan association, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust, or another financial institution or institutional buyer, whether acting for itself or as a trustee; and

(v) A person that is a resident of Canada and has no office or other physical presence in this state, if the person:

(a) Only effects or attempts to effect transactions in securities:

(1) With or through the issuers of the securities involved in the transactions, broker-dealers, banks, savings institutions, trust com-

panies, insurance companies, qualified purchasers as defined by the United States Securities and Exchange Commission, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(2) With or for a person from Canada that is temporarily present in this state if the person and the person from Canada had a bona fide business-client relationship before the person from Canada entered this state; or

(3) With or for a person from Canada that is present in this state and has transactions that are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(b) Files a notice in the form of the person's current application required by the jurisdiction in which the person's main office is located and a consent to service of process;

(c) Is a member of a self-regulatory organization or stock exchange in Canada;

(d) Maintains the person's provincial or territorial registration and the person's membership in good standing in a self-regulatory organization or stock exchange;

(e) Discloses to the person's clients in this state that the person is not subject to the full regulatory requirements of this chapter; and

(f) Is not in violation of § 23-42-507;

(4) "Commissioner" means the Securities Commissioner;

(5) "Covered security" means any security described as a covered security in section 18(b) of the Securities Act of 1933;

(6) [Repealed.]

(7) "Fraud", "deceit", and "defraud" are not limited to common-law deceit;

(8) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;

(9)(A) "Investment adviser" means any person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

(B) "Investment adviser" includes a financial planner or other person that, as an integral component of other financially related services, provides or holds himself, herself, or itself out as providing investment advice to others for compensation and as part of a business.

(C) "Investment adviser" does not include:

(i) A bank, savings and loan association, credit union, or trust company;

(ii) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession;

(iii) A broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them;

(iv) A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service of general, regular, and paid circulation, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(v) A person who has no place of business in this state if:

(a) His or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(b) During the preceding twelve-month period he or she has had fewer than six (6) clients who are residents of this state, other than those persons specified in subdivision (9)(C)(v)*(a)* of this section; or

(vi) Any person not within the intent of this subdivision (9) as the commissioner may by rule or order designate;

(10) "Issuer" means every person who issues or proposes to issue any security, except that:

(A) With respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the securities are issued;

(B) In the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity;

(C) With respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is used or is to be used;

(D) With respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of the right or of any whole or fractional interest in the right who creates fractional interests therein for the purpose of the offering; and

(E) For life settlement contracts, "issuer" means:

(i) For a fractional or pooled interest in a life settlement contract, the person that creates for the purpose of sale the fractional or pooled interest; and

(ii) For a life settlement contract that is not fractionalized or pooled, the person effecting the transaction with the investor in the contract, but does not include a broker-dealer or agent of a broker-dealer;

(11) "Main office" means the principal place of business of a broker-dealer or an investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser;

(12) "Nonissuer" means not directly or indirectly for the benefit of the issuer;

(13) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(14) "Representative" means any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who for compensation:

(A) Makes any recommendation or otherwise renders advice regarding securities;

(B) Manages accounts or portfolios of clients;

(C) Determines which recommendation or advice regarding securities should be given; or

(D) Supervises employees who perform any of the foregoing;

(15)(A)(i) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(ii) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(iii) Any security given or delivered with, or given as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(iv) A purported gift of assessable stock is considered to involve an offer and sale.

(v) Every other sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(B) The terms defined in this subdivision (15) do not include:

(i) Any bona fide pledge or loan;

(ii) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to

a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(iii) Any stock split, reverse stock split, or change in par value which involves the substitution of a security of an issuer for another security of the same issuer; or

(iv) Any act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such an exchange and partly for cash;

(16) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names, as amended;

(17)(A) "Security" means any:

(i) Note;

(ii) Stock;

(iii) Treasury stock;

(iv) Bond;

(v) Debenture;

(vi) Evidence of indebtedness;

(vii) Certificate of interest or participation in any profit-sharing agreement;

(viii) Collateral-trust certificate;

(ix) Preorganization certificate or subscription;

(x) Transferable share;

(xi) Investment contract;

(xii) Variable annuity contract;

(xiii) Life settlement contract or fractionalized or pooled interest in a life settlement contract;

(xiv) Voting-trust certificate;

(xv) Certificate of deposit for a security;

(xvi) Certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or

(xvii) In general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(B) Except as set forth in subdivision (17)(A)(xiii) of this section, "security" does not include any insurance or endowment policy or annuity contract or variable annuity contract issued by any insurance company; and

(18) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

History. Acts 1959, No. 254, § 13; 1961, No. 248, § 6; 1963, No. 479, § 2; 1973, No. 47, §§ 10, 11; 1975, No. 697, § 2; 1975, No. 844, § 6; 1977, No. 493, §§ 4, 5; 1977, No. 806, § 24A; 1983, No. 836, §§ 13, 26; 1983, No. 885, § 1; A.S.A. 1947, § 67-1247; Acts 1987, No. 776, § 1; 1993, No. 1147, § 1802; 1995, No. 845,

§ 1; 1997, No. 173, § 1; 2001, No. 468, §§ 1, 2; 2009, No. 534, § 1; 2011, No. 338, § 1; 2011, No. 339, §§ 1-3; 2013, No. 460, §§ 1-3; 2017, No. 668, §§ 4-6; 2019, No. 110, § 1.

Amendments. The 2017 amendment substituted "Section 18(b)(4)(E)" for "Section 18(b)(4)(D)" in (1)(B)(i)*(c)(2)*; added (1)(B)(iii); and repealed (6).

The 2019 amendment redesignated the former first and second sentences of (9) as (9)(A) and (9)(C), respectively; inserted "and as part of a regular business" in (9)(A); inserted (9)(B); redesignated former (9)(A) through (9)(F) as (9)(C)(i) through (9)(C)(vi); substituted "Any person" for "Such other persons" in (9)(C)(vi); and made a stylistic change.

RESEARCH REFERENCES

Ark. L. Rev. Jesse Kloss, Securing Crypto: Exempting Certain Cryptoassets from the Arkansas Securities Act, 73 Ark. L. Rev. 631 (2020).

U. Ark. Little Rock L. Rev. Frances S. Fendler & A. Heath Abshure, Private Civil Liability Under the Arkansas Securities Act, 38 U. Ark. Little Rock L. Rev. 125 (2016).

CASE NOTES

ANALYSIS

Agents.
Securities.

Agents.

Bond counsel who prepared disclosure documents for the bond underwriter was not shown to have materially aided in the sale of the bonds such as to be liable as the seller's agent under § 23-42-106(c) because there was no proof to establish that bond counsel represented the seller in the seller's effecting or attempting to effect purchases or sales of the bonds or that bond counsel supervised individuals who were effecting or attempting to effect purchases or sales of the bonds for the seller. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, 427 S.W.3d 47 (2013).

Securities.

Circuit court erred in granting summary judgment to the solicitors; while the notes at issue did not meet the test for securities announced in Smith v. State, 266 Ark. 861, 587 S.W.2d 50 (Ark. App. 1979), the all-inclusive nature of the test in Schultz v. Rector-Phillips-Morse, Inc., 261 Ark. 769, 552 S.W.2d 4 (1977), is better suited to the purposes of the Arkansas Securities Act, § 23-42-101 et seq., and the circuit court did not mention *Schultz* and failed to consider the sophistication of the parties, a factor that was prominent in prior cases. Waters v. Millsap, 2015 Ark. 272, 465 S.W.3d 851 (2015).

23-42-104. Criminal penalties.

RESEARCH REFERENCES

Ark. L. Rev. Jesse Kloss, Securing Crypto: Exempting Certain Cryptoassets from the Arkansas Securities Act, 73 Ark. L. Rev. 631 (2020).

23-42-105. Prosecution of criminal offenses.

(a)(1) Prosecutions for offenses described in § 23-42-104 must be commenced within the following periods of limitation:

(A) Felonies — five (5) years from the date of the occurrence; and

(B) Misdemeanors — one (1) year from the date of the occurrence.

(2) The five-year felony and one-year misdemeanor period of limitation does not begin to run until after the commission of the last overt act in the furtherance of a scheme or course of conduct.

(b) For the purposes of venue for any civil or criminal action under this chapter, any violation of this chapter or of any rule or order promulgated hereunder shall be considered to have been committed in:

(1) Any county in which any act was performed in furtherance of the transaction which violated this chapter;

(2) Any county in which the principal or an aider or abettor initiated or acted in furtherance of a course of conduct;

(3) Any county from which any violator gained control or possession of any proceeds of the violation or of any books, records, documents, or other material or objects which were used in furtherance of the violation; or

(4) Any county from which or into which the violator directed any postal, telephonic, electronic, or other communication in furtherance of the violation.

(c) The Securities Commissioner may refer such evidence as is available concerning violations of this chapter or any rule or order hereunder to any appropriate prosecuting authority.

History. Acts 1959, No. 245, § 21; 1961, No. 248, § 8; 1977, No. 493, § 13; 1979, No. 754, § 7; A.S.A. 1947, § 67-1255; Acts 2019, No. 315, § 2511.

Amendments. The 2019 amendment deleted "regulation" following "rule" in the introductory language of (b).

23-42-106. Civil liability — Definitions.

(a)(1) A person is liable to a buyer of a security if the person offers or sells the security:

(A) In violation of § 23-42-212(b), § 23-42-301, or § 23-42-501(1) or (2), a rule or order of the Securities Commissioner under § 23-42-502 which requires the affirmative approval of sales literature before it is used, or any condition imposed under § 23-42-403(d), § 23-42-404(g), or § 23-42-404(i); or

(B) By means of an untrue statement of a material fact or a failure to state a material fact necessary in order to make the statement made, in the light of circumstances under which it is made, not misleading, the buyer not knowing of the untruth or omission, and the seller not sustaining the burden of proof that the seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2) In a successful action under subdivision (a)(1) of this section, the buyer may recover costs and reasonable attorney's fees plus:

(A) Upon tender of the security, the consideration paid for the security and interest at six percent (6%) per year from the date of payment, less the amount of any income received from owning the security; or

(B)(i) Damages if the buyer no longer owns the security.

(ii) Damages are the amount that would be recoverable upon a tender of the security less the value of the security when the buyer disposed of the security plus interest at six percent (6%) per year from the date of disposition of the security.

(b)(1) A person is liable to a seller of a security if the person buys the security:

(A) In violation of § 23-42-301, § 23-42-307, § 23-42-507, or § 23-42-508; or

(B) By means of an untrue statement of a material fact or a failure to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the buyer not sustaining the burden of proof that the buyer did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2)(A) In a successful action under subdivision (b)(1) of this section, the seller may recover costs and reasonable attorney's fees plus:

(i) Upon tender of the consideration the seller received in a transaction under subdivision (b)(1) of this section:

(a) The security; or

(b) The security plus any income or other distributions in cash or other property received directly or indirectly by the purchaser; or

(ii)*(a)* Damages together with interest at six percent (6%) per year from the date of purchase.

(b) Damages may include out-of-pocket losses or losses for the benefit of the bargain.

(B) A tender made under subdivision (b)(2)(A)(i) of this section only requires notice in writing of the present ability to pay the amount tendered and willingness to take the security for the amount specified.

(c)(1) A person that directly or indirectly receives consideration for providing investment advice to another party:

(A) In violation of § 23-42-301 is liable to the other party for:

(i) The consideration paid for the advice;

(ii) Interest at the rate of six percent (6%) per year from the date of payment;

(iii) Costs; and

(iv) Reasonable attorney's fees; or

(B) By employing a device, scheme, or artifice to defraud the other party or by engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon the other party is liable to the other party for:

(i) The consideration paid for the advice plus interest at the rate of six percent (6%) per year from the date of payment;

(ii) Damages caused by the fraudulent or deceitful conduct less the amount of any income received as a result of the fraudulent or deceitful conduct;

(iii) Costs; and

(iv) Reasonable attorney's fees.

(2) Subdivision (c)(1) of this section does not apply to a broker-dealer or its agents if:

(A) The investment advice provided is solely incidental to transacting business as a broker-dealer; and

(B) Special compensation is not paid for the investment advice.

(d)(1) A secondary offender has joint and several liability with a right of contribution for the actions of a primary offender unless the secondary offender satisfies the burden of proving that the secondary offender did not know, and in the exercise of reasonable care could not have known, of the existence of the actions of the primary offender that give rise to liability under this section.

(2) As used in subdivision (d)(1) of this section:

(A) "Primary offender" means a person that is liable under subsection (a), subsection (b), or subsection (c) of this section; and

(B) "Secondary offender" means:

(i) A person that controls a primary offender;

(ii) A partner, officer, or director of a primary offender and any other person occupying a similar status or performing a similar function with respect to the primary offender;

(iii) An employee of a primary offender who materially aids in the actions of a primary offender that give rise to liability under this section; and

(iv) A broker-dealer, agent, investment adviser, or investment adviser representative that materially aids in the actions of a primary offender that give rise to liability under this section.

(e) A tender required by this section may be made at any time before entry of judgment.

(f) Every cause of action under this section survives the death of a person who might have been a plaintiff or defendant.

(g) A person may not sue under this section unless the action is instituted within three (3) years after the violation occurred.

(h) A buyer shall not sue under this section:

(1) If the buyer received a written offer, before suit and at a time when the buyer owned the security, to refund the consideration paid together with interest at six percent (6%) per year from the date of payment less the amount of any income received on the security, and the buyer failed to accept the offer within thirty (30) days of its receipt; or

(2) If the buyer received such an offer before suit and at a time when the buyer did not own the security unless the buyer rejected the offer in writing within thirty (30) days of its receipt.

(i) A person who has made or engaged in the performance of a contract in violation of this chapter or any rule or order of the commissioner, or who has acquired any purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation may not sue on the contract.

History. Acts 1959, No. 254, § 22; 1971, No. 131, § 6; 1973, No. 47, § 17; 1977, No. 493, §§ 14, 16; A.S.A. 1947, § 67-1256; Acts 1995, No. 845, § 2; 1997, No. 173, § 2; 1999, No. 1225, § 1; 2013, No. 460, § 4; 2017, No. 668, §§ 7-11.

Amendments. The 2017 amendment, substituted "the buyer not knowing of the untruth or omission, and the seller not sustaining the burden of proof that the seller did not know" for "if the buyer does not know of the untruth or omission and meets the burden of proof that he or she did not know" in (a)(1)(B); rewrote (b)(1) and (b)(2)(B); redesignated part of (c)(1)(A) as (c)(1)(A)(i) through (iv); substituted "Reasonable attorney's fees" for "a reasonable attorney's fee" twice in (c); substituted "by engaging" for "engages" in the introductory language of (c)(1)(B); substituted "the primary offender" for "a primary offender" near the end of (d)(1); substituted "A buyer shall not" for "A person may not" in the introductory language of (h); and made stylistic changes.

RESEARCH REFERENCES

ALR. Heightened Pleading Requirements for Alleging Securities Fraud-Post-Iqbal/Twombly — First Circuit Cases. 31 A.L.R. Fed. 3d Art. 11 (2018).

Ark. L. Rev. Jesse Kloss, Securing Crypto: Exempting Certain Cryptoassets from the Arkansas Securities Act, 73 Ark. L. Rev. 631 (2020).

U. Ark. Little Rock L. Rev. Frances S. Fendler & A. Heath Abshure, Private Civil Liability Under the Arkansas Securities Act, 38 U. Ark. Little Rock L. Rev. 125 (2016).

CASE NOTES

ANALYSIS

Agent.
Control of Sale.
Seller.

Agent.

Bond counsel who prepared disclosure documents for the bond underwriter was not shown to have materially aided in the sale of the bonds such as to be liable as the seller's agent under subsection (c) of this section because there was no proof to establish that bond counsel represented the seller in the seller's effecting or attempting to effect purchases or sales of the bonds or that bond counsel supervised individuals who were effecting or attempting to effect purchases or sales of the bonds for the seller. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, 427 S.W.3d 47 (2013).

Control of Sale.

Bond counsel who prepared disclosure documents for the bond underwriter was not shown to have controlled the sale of the bonds and was not liable to the purchasers under subsection (c) of this section because there was no proof that bond counsel directed the management and policies of the seller. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, 427 S.W.3d 47 (2013).

Seller.

Bond counsel's failure in preparing the disclosure documents for the bond underwriter to directly disclose the superior purchase mortgage encumbering the property pledged as security for the bonds did not constitute a sale by bond counsel of a security by means of an untrue statement of material fact because the bonds were issued by the municipal improvement district and sold through the underwriter; bond counsel was not a seller and, as it was not alleged that bond counsel was a seller, bond counsel could not be liable under subsection (a) of this section. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, 427 S.W.3d 47 (2013).

23-42-109. Waiver of compliance void.

CASE NOTES

Statute Did Not Void Agreement Provision.

Trial court did not abuse its discretion in finding that this section did not void a paragraph in the agreement acknowledging that the stockholder had been provided with or permitted access to all information that he deemed material to making an informed decision about selling his stock. Davis v. Davis, 2016 Ark. App. 33, 480 S.W.3d 878 (2016).

Subchapter 2 — Administration

Effective Dates. Acts 2013, No. 438, § 3: July 1, 2013. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this Act on July 1, 2013 is essential to the operation of programs supported by funds deposited into and contained in the Securities Department Fund, and that in the event of the extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2013 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2013."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

23-42-201. Administration by Securities Commissioner — Conflicts of interest.

(a)(1) This chapter shall be administered by the Securities Commissioner, who shall be appointed by the Governor and who shall serve at the pleasure of the Governor.

(2) The commissioner shall report to the Secretary of the Department of Commerce.

(b)(1) There is created within the Department of Commerce the State Securities Department.

(2) The State Securities Department shall have all the powers and duties assigned pursuant to Acts 1983, No. 691, and all subsequent delegations of authority.

(c) No person shall serve in the State Securities Department or in the Department of Commerce working for the State Securities Department in any capacity who engages in any activities regulated under the provisions of this chapter.

History. Acts 1959, No. 254, §§ 18, 30; 1961, No. 248, § 10; 1973, No. 471, § 2; A.S.A. 1947, §§ 67-1252, 67-1262; Acts 2019, No. 910, § 575.

Amendments. The 2019 amendment redesignated (a) as (a)(1), and added (a)(2); inserted (b) and redesignated former (b) as (c); and inserted "or the Department of Commerce working for the State Securities Department" in (c).

23-42-203. Confidentiality of information or proceedings generally.

(a) It is unlawful for the Securities Commissioner or any of the officers or employees of the State Securities Department or officers or employees of the Department of Commerce working for the State Securities Department to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public.

(b) Neither the commissioner nor any of the officers or employees of the State Securities Department or officers or employees of the Department of Commerce working for the State Securities Department shall disclose the information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter or in any judicial proceedings when the information is not privileged.

(c) No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his or her officers or employees.

(d) Nothing herein shall prevent the commissioner or any officers or employees of the State Securities Department or officers or employees of the Department of Commerce working for the State Securities Department from sharing with state or federal law enforcement authorities, other state or federal regulatory authorities, or self-regulatory organizations authorized by law any information which they may have or obtain in aid of the enforcement of this chapter or any other securities act or the criminal provisions of any laws.

(e) The commissioner, in his or her discretion, shall determine when an administrative proceeding shall be public.

History. Acts 1959, No. 254, §§ 18, 24; 1963, No. 479, § 4; 1985, No. 939, § 9; A.S.A. 1947, §§ 67-1252, 67-1258; Acts 1995, No. 845, § 4; 2019, No. 910, § 576.

Amendments. The 2019 amendment substituted "the officers or employees of the State Securities Department or officers or employees of the Department of Commerce working for the State Securities Department" for "his or her officers or employees" in (a) and (b); and inserted "or officers or employees of the Department of Commerce working for the State Securities Department" in (d).

23-42-207. Public inspection of records — Exceptions.

(a)(1) Unless otherwise specified below, all information filed with the Securities Commissioner shall be available for public inspection.

(2) The information contained in or filed with any registration statement, notice filing, application, or report may be made available to the public under any rules which the commissioner prescribes.

(b) Except for reasonable segregable portions which are public information, the commissioner shall not publish or make available the following information:

(1) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation;

(2) Interagency or intraagency memoranda or letters, including generally records which reflect discussions between or consideration by the commissioner or members of his or her staff, or both, of any action taken or proposed to be taken by the commissioner or by any members of his or her staff, and, specifically, reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the commissioner, or prepared otherwise in the course of an examination or investigation or related litigation conducted by or on behalf of the commissioner, except those which by law would routinely be made to a party other than an agency in litigation with the commissioner;

(3) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including those concerning employees of the State Securities Department or employees of the Department of Commerce working for the State Securities Department and those concerning persons subject to regulation by employees of broker-dealers reported to the commissioner pursuant to the State Securities Department's rules concerning registration of broker-dealers and agents;

(4)(A) Investigatory records compiled for law enforcement purposes to the extent that production of the records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, or disclose the identity of a confidential source.

(B) In a particular case the commissioner may also withhold investigatory records that would constitute an unwarranted invasion of personal privacy, disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel.

(C) Investigatory records include all documents, records, transcripts, correspondence, and related memoranda and work product concerning examinations and other investigations and related litigation as authorized by law, which pertain to or may disclose the possible violations by any person of any provision of any of the statutes or rules administered by the commissioner, and all written communications from or to any person confidentially complaining or otherwise furnishing information respecting the possible violations, as well as all correspondence and memoranda in connection with the confidential complaints or information;

(5) Information contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;

(6)(A) Financial records of broker-dealers, investment advisers, agents, or representatives obtained during or as a result of an examination by the State Securities Department.

(B) However, when those records are required by this chapter to be filed with the State Securities Department as part of a notice filing, registration, annual renewal, or otherwise, the records, including financial statements prepared by certified public accountants, shall be public unless sections of the information are bound separately and marked privileged and confidential by the broker-dealer, investment adviser, agent, or representative upon its submission, in which case it shall be deemed nonpublic until ten (10) days after the commissioner has given the broker-dealer, investment adviser, agent, or representative notice that an order will be entered deeming the material public.

(C) If the broker-dealer, investment adviser, agent, or representative believes the commissioner's order is incorrect, the broker-dealer, investment adviser, agent, or representative may seek an injunction from the Pulaski County Circuit Court ordering the State Securities Department to hold the information as nonpublic pending a final order of a court of competent jurisdiction if the order of the commissioner is appealed pursuant to applicable law;

(7) Trade secrets obtained from any person; and

(8) Any other records which under the Freedom of Information Act of 1967, § 25-19-101 et seq., or other laws are required to be closed to the public and are not deemed open to the public inspection.

History. Acts 1959, No. 254, § 25; 1985, No. 939, § 10; A.S.A. 1947, § 67-1259; Acts 1995, No. 845, § 8; 1997, No. 173, § 8; 2009, No. 462, § 4; 2019, No. 315, § 2512; 2019, No. 910, § 577.

Amendments. The 2019 amendment by No. 315 substituted "or rules" for "rules or regulations" in (b)(4)(C).

The 2019 amendment by No. 910, in (b)(3), deleted "all" preceding "employees of the State Securities Department", inserted "or employees of the Department of Commerce working for the State Securities Department", and substituted "State Securities Department's" for "department's".

23-42-209. Injunction, mandamus, or other ancillary relief.

(a)(1)(A) Whenever it appears to the Securities Commissioner, upon sufficient grounds or evidence satisfactory to the commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, except the provisions of § 23-42-509, or any rule or order under this chapter, including any order issued under § 23-42-509, the commissioner may summarily order the person to cease and desist from the act or practice.

(B) Upon the entry of the order, the commissioner shall promptly notify the person that the order has been entered, of the reasons therefor, and of his or her right to a hearing on the order.

(2)(A) A hearing shall be held on the written request of the person aggrieved by the order if the request is received by the commissioner within thirty (30) days of the date of the entry of the order, or if ordered by the commissioner.

(B) If a hearing is not requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner.

(C) After notice and an opportunity for a hearing, the commissioner may:

(i) Affirm, modify, or vacate the cease and desist order under subdivision (a)(1)(A) of this section; and

(ii) For a violation of this chapter other than a violation of § 23-42-509, by order, levy a fine not to exceed:

(a) Ten thousand dollars ($10,000) for each violation or an amount equal to the total amount of money received in connection with each violation; or

(b) If a victim of a violation is sixty-five (65) years of age or older:

(1) Twenty thousand dollars ($20,000) for each violation; or

(2) Two (2) times the amount of money received in connection with each violation.

(b)(1) The commissioner may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin an act or practice that violates this chapter and to enforce compliance with this chapter or any rule or order under this chapter:

(A) After an order is issued under subdivision (a)(1) or subdivision (a)(2) of this section; or

(B) Without issuing an order under subdivision (a)(1) or subdivision (a)(2) of this section.

(2) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

(3) The court shall not require the commissioner to post a bond.

(4) The commissioner may also obtain upon proper showing any other ancillary relief in the public interest, including without limitation:

(A) The appointment of a receiver, temporary receiver, or conservator;

(B) A declaratory judgment;
(C) An accounting;
(D) Disgorgement of profits;
(E) Restitution; or
(F) The assessment of a fine in an amount of not more than the total amount of money received in connection with a violation of this chapter.

(c) This chapter does not prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

History. Acts 1959, No. 254, § 20; 1963, No. 479, § 3; 1979, No. 754, § 6; A.S.A. 1947, § 67-1254; Acts 1995, No. 845, § 10; 1997, No. 173, § 9; 2009, No. 462, § 7; 2009, No. 534, § 2; 2011, No. 339, § 4; 2017, No. 668, § 12.

Amendments. The 2017 amendment substituted "If a hearing is not requested" for "If no hearing is requested" in (a)(2)(B); redesignated former (a)(3) through (a)(5) as present (b)(1) through (b)(3); substituted "shall" for "may" in (b)(3); redesignated former (b) as present (b)(4) and redesignated former (b)(1) through (b)(6) as (b)(4)(A) through (b)(4)(F); substituted "This chapter does not" for "Nothing herein shall" in (c); and made stylistic changes.

23-42-210. Judicial review.

(a)(1) A person aggrieved by a final order of the Securities Commissioner may obtain a review of the order in any state court of competent jurisdiction by filing in court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part.

(2) A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these copies have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part.

(b)(1) The findings of the commissioner as to the facts, if supported by competent, material, and substantial evidence, are conclusive.

(2) If either party applies to the court for leave to adduce additional material evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing, in any manner and upon any conditions which the court considers proper. The commissioner may modify his or her findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

(c) The judgment of the court is final, subject to review by the Supreme Court.

(d) The commencement of proceedings under subsection (a) of this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

History. Acts 1959, No. 254, § 23; 1961, No. 248, § 9; A.S.A. 1947, § 67-1257; Acts 2017, No. 668, § 13.

Amendments. The 2017 amendment, in (a)(1), substituted "A person" for "Any person" and "thirty (30)" for "sixty (60)".

23-42-211. Disposition of fees.

(a)(1) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the "Securities Department Fund".

(2) The Securities Department Fund shall be used for the maintenance, operation, support, and improvement of the State Securities Department in carrying out its functions, powers, and duties as set out by law and by rule not inconsistent with law.

(3) The Securities Department Fund shall consist of those portions of fees designated for deposit into the Securities Department Fund under § 23-42-304(a)(2), (a)(4), and (a)(5), § 23-42-404(b)(1), and § 23-42-509(a).

(4) Notwithstanding subdivision (a)(3) of this section, at the end of each fiscal year, the Securities Commissioner shall transfer into the General Revenue Fund Account of the State Apportionment Fund any moneys in the Securities Department Fund that exceed the amount of the department's next fiscal-year budget.

(b) The department is authorized to promulgate such rules necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

History. Acts 1959, No. 254, § 30; 1961, No. 248, § 10; 1973, No. 471, § 3; A.S.A. 1947, § 67-1262; Acts 1993, No. 659, §§ 1, 5; 1993, No. 850, §§ 1, 5; 2003, No. 759, § 1; 2009, No. 534, § 3; 2011, No. 294, § 8; 2013, No. 438, § 2; 2017, No. 668, § 14; 2019, No. 110, § 2; 2019, No. 315, § 2513.

Amendments. The 2017 amendment deleted "and regulation" following "rule" in (a)(2); substituted "under § 23-42-304(a)(2), (a)(4), and (a)(5), § 23-42-404(b)(1), and § 23-42-509(a)" for "pursuant to §§ 23-42-304(a)(2), (a)(4), and (a)(5) and 23-42-404(b)(1) and such other funds as may be provided by law or regulatory action" in (a)(3); and substituted "two million five hundred thousand dollars ($2,500,000)" for "four million dollars ($4,000,000)" in (a)(4).

The 2019 amendment by No. 110 substituted "at the end of each fiscal year, the Securities Commissioner shall transfer into the General Revenue Fund Account of the State Apportionment Fund any moneys in the Securities Department Fund that exceed the amount of the department's next fiscal-year budget" for "no more than two million five hundred thousand dollars ($2,500,000) shall be deposited into the fund in any one (1) fiscal year" in (a)(4).

The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b).

23-42-213. Disposition of fines — Investor Education Fund.

(a) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the "Investor Education Fund".

(b) Except as provided by subsection (c) of this section, all fines imposed and collected under §§ 23-42-209 and 23-42-308 shall be deposited as special revenues into the State Treasury and credited to the fund, to be administered by the Securities Commissioner for the following purposes:

(1) To inform and educate the public regarding investments in securities in order to help investors and potential investors:

(A) Evaluate their investment decisions;

(B) Protect themselves from unfair, inequitable, or fraudulent offerings;

(C) Choose their broker-dealers, agents, and investment advisers more carefully;

(D) Be alert for false or misleading advertising or other harmful practices; and

(E) Know their rights as investors; and

(2) To pay for:

(A) Costs, expenses, and charges incurred by the State Securities Department in connection with the presentation and dissemination of information to the public as described in this section, including costs of printing copies of the Arkansas Securities Act, § 23-42-101 et seq., Rules of the Arkansas Securities Commissioner, and other materials designed to inform the public as set forth in this section;

(B) Costs of advertising and promotional materials designed to accomplish the purposes of this subdivision (b)(2);

(C) Costs of equipment necessary or useful for such presentations; and

(D) Costs and expenses associated with conducting a stock market game for educational purposes in selected schools in the state's public school system.

(c) Fines collected in excess of one hundred fifty thousand dollars ($150,000) in any one (1) fiscal year shall be deposited as general revenues.

History. Acts 2003, No. 759, § 2; 2013, No. 460, § 5; 2017, No. 668, §§ 15, 16.

Amendments. The 2017 amendment deleted "or moneys collected in lieu of a fine" following "imposed and collected" in (b); and, in (c), substituted "Fines collected" for "Funds", deleted "collected" following "($150,000)", and substituted "deposited as general revenues" for "designated as special revenues and deposited into the Securities Department Fund".

Subchapter 3 — Broker-Dealers, Agents, and Investment Advisers

23-42-301. Registration required — Unlawful acts — Supervision requirements.

(a) It is unlawful for a person to transact business in this state as a broker-dealer or agent unless he or she is registered under this chapter.

(b)(1) It is unlawful for a registered broker-dealer or issuer to employ an unregistered agent except a nonresident agent who is registered by any other state securities administrator and who effects transactions in this state exclusively with registered broker-dealers.

(2) The registration of an agent is not effective during a period when he or she is not associated with a particular:

(A) Broker-dealer registered under this chapter; or

(B) Issuer.

(3)(A) A broker-dealer or issuer shall notify promptly the Securities Commissioner or the commissioner's designee if an agent begins or terminates:

(i) An association with a broker-dealer or issuer; or

(ii) The activities that make him or her an agent of the broker-dealer or issuer.

(B) If an agent terminates or withdraws his or her registration with a broker-dealer or issuer, a subsequent application by the agent for registration is treated as:

(i) An initial registration; and

(ii) A notification by the agent of termination or withdrawal of the previous registration or application.

(4) [Repealed.]

(c) It is unlawful for a person to transact business in this state as an investment adviser or investment adviser representative without first being registered under this chapter unless the person:

(1) Is registered as an investment adviser with the United States Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2013, and has filed with the commissioner or the commissioner's designee a notice filing consisting of:

(A) A copy of documents on file with the United States Securities and Exchange Commission that the commissioner may by rule or order prescribe; and

(B) The fee set forth in § 23-42-304(a)(3);

(2) Is not registered as an investment adviser with the United States Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2013, because the person is not an investment adviser under section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2013;

(3) Is a "representative" of an investment adviser registered with the United States Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2013, and has no place of business located in this state; or

(4) Is a supervised person of an investment adviser registered with the United States Securities and Exchange Commission, but is not an investment adviser representative as defined by Rule 203A-3 of the rules and regulations of the Investment Advisers Act of 1940, 17 C.F.R. § 275, as they existed on January 1, 2013.

(d)(1) A notice filing required by subdivision (c)(1) of this section becomes effective upon receipt by the commissioner or the commissioner's designee of the notice filing, consent to service of process, and the appropriate fee.

(2)(A) The registration and notice filing required by subdivision (c)(1) of this section expires December 31 of each year unless renewed.

(B) Effective upon the commissioner's receipt of notification, an investment adviser may terminate the investment adviser's notice filing under subdivision (c)(1) of this section by providing the commissioner notification of the termination.

(e) A broker-dealer or investment adviser shall not conduct business from a branch office within this state unless the branch office is registered under this chapter.

(f)(1) A broker-dealer shall establish, maintain, and enforce a system to supervise the activities of its agents and employees that is reasonably designed to achieve compliance with this chapter, the rules and orders of the commissioner, all other applicable state and federal securities laws, and the rules of self-regulatory organizations.

(2) A broker-dealer's supervisory system shall include without limitation the:

(A) Establishment and maintenance of written procedures designed to achieve compliance with subdivision (f)(1) of this section; and

(B) Appointment of at least one (1) agent of the broker-dealer, who is registered in Arkansas and meets the qualifications and performs the supervisory responsibilities of the broker-dealer for activities in this state under rules established by the commissioner.

(g)(1) An investment adviser shall establish, maintain, and enforce a system to supervise the activities of its representatives and employees that is reasonably designed to achieve compliance with this chapter, the rules and orders of the commissioner, all other applicable state and federal securities laws, and the rules of self-regulatory organizations.

(2) An investment adviser's supervisory system shall include without limitation the:

(A) Establishment and maintenance of written procedures designed to achieve compliance with subdivision (g)(1) of this section; and

(B) Appointment of at least one (1) representative of the investment adviser, who is registered in Arkansas and meets the qualifications and performs the supervisory responsibilities of the investment adviser for activities in this state under rules established by the commissioner.

(h) The commissioner may by rule establish concurrent registration with a broker-dealer, issuer, or investment adviser or any combination of broker-dealers, issuers, and investment advisers.

History. Acts 1959, No. 254, § 3; 1961, No. 248, § 1; 1973, No. 47, §§ 1, 2; 1975, No. 844, §§ 1, 5; 1977, No. 493, § 1; 1977, No. 806, § 24A; 1983, No. 836, §§ 1-4; 1985, No. 939, § 1; A.S.A. 1947, § 67-1237; Acts 1995, No. 845, § 11; 1995 (1st Ex. Sess.), No. 14, § 1; 1997, No. 173, § 11; 2009, No. 462, § 8; 2009, No. 534, § 4; 2011, No. 338, § 2; 2013, No. 460, §§ 6-10.

U.S. Code. Sections 202 and 203 of the Investment Advisers Act of 1940, referred to in this section, are codified as 15 U.S.C. § 80b-2 and 15 U.S.C. § 80b-3, respectively.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Frances S. Fendler & A. Heath Abshure, Private Civil Liability Under the Arkansas Securities Act, 38 U. Ark. Little Rock L. Rev. 125 (2016).

23-42-302. Registration procedure.

(a)(1) A broker-dealer, agent, investment adviser, representative, or branch office may obtain an initial or renewal registration by filing with the Securities Commissioner or the commissioner's designee an application and fee, together with a consent to service of process under § 23-42-107(a).

(2) The commissioner may by rule or order approve a limited registration with such limitations, qualifications, or conditions as the commissioner deems appropriate.

(b) The commissioner may by rule set forth the form and content of the application and establish a procedure for renewal registration or initial registration.

(c) The application shall contain whatever information the commissioner by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications, disciplinary history, and business history of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and history of any partner, officer, director, person occupying a similar status or performing similar functions, or any persons directly or indirectly controlling the broker-dealer or investment adviser;

(4) Any investigation, proceeding, order, injunction, arrest, or conviction of any felony or misdemeanor; and

(5) The applicant's financial condition and history.

(d) The commissioner may provide for a written examination to be taken by each class of applicants to be used as one (1) of the bases in determining an applicant's qualifications to be registered.

(e) The commissioner is authorized to conduct an investigation in order that he or she may determine the fitness of any applicant. Each applicant shall pay to the commissioner an investigation fee, and the

amount of each fee shall be determined on the same basis as is the examination fee required of broker-dealers under § 23-42-306(d).

(f) If no denial order is in effect or no proceeding is pending under § 23-42-308, registration becomes effective on the thirtieth day after the application is completed. The commissioner may determine an earlier effective date upon review of the application.

(g) Applications which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the application and afforded a reasonable opportunity to correct such deficiencies.

(h) A registered broker-dealer, investment adviser, or person required to make a notice filing pursuant to § 23-42-301(c)(1) may file an application for registration or notice filing of a successor, whether or not the successor is then in existence. The application or notice filing shall comply with the requirements for an initial application or notice filing.

History. Acts 1959, No. 254, § 4; 1961, No. 248, § 2; 1973, No. 47, § 8; 1975, No. 844, § 5; 1983, No. 836, §§ 5, 6; A.S.A. 1947, § 67-1238; Acts 1995, No. 845, § 12; 1997, No. 173, § 12; 2009, No. 462, § 9; 2009, No. 534, § 5; 2017, No. 668, § 17.

Amendments. The 2017 amendment inserted "rule or" in (a)(2); and deleted "whereby registration may become effective prior to the filing of a completed application or fee" at the end of (b).

23-42-304. Filing fees — Rules.

(a) Every applicant for initial or renewal registration, every person making a notice filing as required by § 23-42-301, every exempt reporting adviser, and every investment adviser to a private fund shall pay a filing fee of:

(1) Three hundred dollars ($300) in the case of a broker-dealer;

(2) Seventy-five dollars ($75.00) in the case of an agent, of which twenty-five dollars ($25.00) shall be designated as special revenues and shall be deposited into the Securities Department Fund;

(3) Three hundred dollars ($300) in the case of an investment adviser;

(4) Seventy-five dollars ($75.00) in the case of a representative, of which twenty-five dollars ($25.00) shall be designated as special revenues and shall be deposited into the Securities Department Fund;

(5) Fifty dollars ($50.00) in the case of a branch office, of which the entire amount shall be designated as special revenues and deposited into the Securities Department Fund; and

(6) Three hundred dollars ($300) in the case of an exempt reporting adviser or investment adviser to a private fund that complies with exemption requirements.

(b) A filing fee is nonrefundable.

(c) The State Securities Department is hereby authorized to promulgate such rules necessary to administer the fees, rates, tolls, or charges for services established by this section and § 23-42-404 and is directed

to prescribe and collect such fees, rates, tolls, or charges for the services by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

History. Acts 1959, No. 254, § 4; 1961, No. 248, § 2; 1975, No. 844, § 2; 1985, No. 939, § 2; A.S.A. 1947, § 67-1238; Acts 1987, No. 449, § 1; 1993, No. 659, §§ 2, 5; 1993, No. 850, § 2, 5; 1995, No. 845, § 14; 1997, No. 173, § 14; 2009, No. 534, § 6; 2017, No. 668, § 18; 2019, No. 315, § 2514; 2021, No. 533, § 1.

Amendments. The 2017 amendment substituted "Securities Department Fund" for "fund" in (a)(4) and (a)(5); and added (a)(6).

The 2019 amendment deleted "and regulations" following "rules" in the section heading and in (c).

The 2021 amendment substituted "§ 23-42-301, every exempt reporting adviser, and every investment adviser to a private fund" for "§ 23-42-301(c)" in the introductory language of (a); and substituted "A" for "After an application for registration has been processed, in whole or in part, any" and "is" for "shall be" in (b).

23-42-306. Records and reports — Examinations.

(a) Every applicant, registered issuer, registered broker-dealer, or registered investment adviser shall make and keep any accounts, correspondence, memoranda, papers, books, and other records which the Securities Commissioner by rule prescribes. However, this subsection shall not apply to any registered investment adviser that maintains its principal place of business in a state other than Arkansas that:

(1) Is registered or licensed as such in the state in which it maintains its principal place of business; and

(2) Is in compliance with the applicable books and record-keeping requirements of the state in which it maintains its principal place of business.

(b) Every registered broker-dealer, issuer, or investment adviser shall file any financial reports which the commissioner by rule prescribes.

(c) If the information contained in any document filed with the commissioner or the commissioner's designee is or becomes inaccurate or incomplete in any material respect, then the registrant shall promptly file a correcting amendment.

(d)(1) All the records referred to in subsection (a) of this section are subject, at any time or from time to time, to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

(2)(A) The applicant, issuer, broker-dealer, or investment adviser shall pay a fee for each examination, not to exceed one hundred fifty dollars ($150) per examiner for each day or for each part of a day during which the examination is conducted.

(B) In addition to the fee, the commissioner may require the applicant, issuer, broker-dealer, or investment adviser to pay the actual hotel and traveling expenses of each authorized examiner

traveling to and from the office of the commissioner while the examiner is conducting the examination.

(3) For the purpose of avoiding unnecessary duplication of examination, the commissioner, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information he or she or his or her representatives may obtain as a result of any investigation or examination. "Examination" shall include the right to reproduce copies of the records referred to in subsection (a) of this section.

History. Acts 1959, No. 254, § 5; 1961, No. 248, § 3; 1963, No. 479, § 1; 1973, No. 47, §§ 5-7; 1975, No. 844, § 4; 1983, No. 836, § 9; 1985, No. 939, § 3; A.S.A. 1947, § 67-1239; Acts 1995, No. 845, § 17; 1997, No. 173, § 16; 1999, No. 363, § 2; 2009, No. 534, § 8; 2011, No. 339, § 5; 2021, No. 533, § 2.

Amendments. The 2021 amendment substituted "during which the examination is conducted" for "during which examiners are absent from the office of the commissioner for the purpose of conducting the examination" in (d)(2)(A).

23-42-308. Denial, suspension, revocation, or withdrawal of registration, and other penalties.

(a) The Securities Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he or she finds that:

(1) The order is in the public interest; and

(2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director; any person occupying a similar status or performing similar functions; or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration, which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(C) Has:

(i) Been convicted of:

(a) A felony; or

(b) Within the previous ten (10) years, a misdemeanor involving a security, a commodity future or option contract, or any aspect of a

business involving securities, commodities, investments, franchises, insurance, banking, or finance; or

(ii) Pending against him or her a charge of unlawful conduct involving securities or any aspect of the securities business;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) Is the subject of an order of the commissioner, including without limitation an order denying, suspending, revoking, or making conditional or probationary a registration as a broker-dealer, agent, investment adviser, or representative;

(F)(i) Is the subject of any of the following orders entered within the past five (5) years:

(a) An order entered by:

(1) The securities administrator of any other state;

(2) Any national securities, commodities, or banking agency or jurisdiction;

(3) Any national securities or commodities exchange;

(4) Any securities or commodities self-regulatory organization;

(5) Any registered securities association or clearing agency denying, revoking, suspending, or expelling him or her from registration as a broker-dealer, agent, investment adviser, or representative, or the substantial equivalent of those terms; or

(6) The insurance administrator of any state; or

(b) A United States postal fraud order.

(ii) However, the commissioner shall not:

(a) Institute a revocation or suspension proceeding under this subdivision (a)(2)(F) more than five (5) years from the date of the order relied on; or

(b) Enter an order under this subdivision (a)(2)(F) on the basis of an order under another state act, unless that order was based on facts that would currently constitute a ground for an order under this section;

(G) Has engaged in dishonest or unethical practices in the securities business;

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision (a)(2)(H) without a finding of insolvency as to the broker-dealer or investment adviser;

(I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except that:

(i) The commissioner shall not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself or herself, if he or she is an individual, or an agent of the broker-dealer;

(ii) The commissioner shall not enter an order against an investment adviser on the basis of the lack of qualification of any person

other than the investment adviser himself or herself, if he or she is an individual, or any other person who represents the investment adviser in doing any of the acts which make him or her an investment adviser;

(iii) The commissioner shall not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge, or both;

(iv) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer; and

(v) The commissioner shall consider that an investment adviser or representative is not necessarily qualified solely on the basis of experience as a broker-dealer or agent;

(J) Has failed reasonably to supervise the agents or employees of the broker-dealer or the representatives or employees of the investment adviser; or

(K) Has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subdivision (a)(2)(K), and he or she shall vacate the order when the deficiency has been corrected.

(b) The commissioner may not institute a suspension or revocation proceeding solely on the basis of a final judicial or administrative order known to him or her when registration became effective, unless the proceeding is instituted within one hundred eighty (180) days after registration or unless the applicant or registrant waives the time limitation. For the purpose of this provision, a final judicial or administrative order shall not include an order that is stayed or subject to further review or appeal. This provision shall not apply to renewal registration.

(c)(1) The commissioner may by order summarily postpone or suspend a registration pending final determination of any proceeding under this section.

(2) Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer, if the applicant or registrant is an agent or representative, that the order has been entered, and of the reasons therefor, and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) The commissioner may by summary order cancel a registration or application if he or she finds that any registrant or applicant:

(1) Is no longer in existence;

(2) Has ceased to do business as a broker-dealer, agent, investment adviser, or representative; or

(3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after a reasonable search.

(e)(1) Withdrawal from registration as a broker-dealer, agent, investment adviser, or representative becomes effective thirty (30) days after receipt of an application to withdraw, or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application to withdraw is filed or a proceeding to deny, revoke, or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application to withdraw is filed.

(2) If a proceeding is pending or instituted, then withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines.

(3) If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under subdivision (a)(2)(B) of this section within one (1) year after withdrawal became effective and may enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section, except under subdivision (c)(1) of this section, without:

(1) Appropriate prior notice to the applicant or registrant and to the employer or prospective employer if the applicant or registrant is an agent or representative;

(2) Opportunity for hearing; and

(3) Written findings of fact and conclusions of law.

(g) In addition to the authority granted in subsections (a)-(e) of this section, upon notice and opportunity for hearing as provided in subsection (f) of this section, the commissioner may for each violation of this chapter fine any broker-dealer, agent, investment adviser, or representative not to exceed:

(1) Ten thousand dollars ($10,000) or an amount equal to the total amount of money received in connection with each separate violation; or

(2) If a victim of a violation is sixty-five (65) years of age or older:

(A) Twenty thousand dollars ($20,000) for each violation; or

(B) Two (2) times the amount of money received in connection with each violation.

(h) Nothing in this section shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

History. Acts 1959, No. 254, § 6; 1961, No. 248, § 4; 1983, No. 836, §§ 10-12; A.S.A. 1947, § 67-1240; Acts 1995, No. 845, § 19; 2009, No. 534, §§ 9, 10; 2011, No. 339, §§ 6, 7; 2013, No. 460, §§ 11, 12; 2017, No. 668, §§ 19, 20; 2019, No. 391, § 4; 2021, No. 533, § 3.

A.C.R.C. Notes. The 2013 amendment omitted "for registration" following "or applicant" in the introductory language of

(d) without striking through the language to indicate its repeal.

Amendments. The 2017 amendment rewrote (a)(2)(C); inserted "including without limitation an order" in (a)(2)(E); substituted "shall not" for "may not" in (a)(2)(F)(ii) and (a)(2)(I)(i) through (a)(2)(I)(iii); in (e)(1), inserted "to withdraw" following the second and third occurrences of "application" and inserted "deny"; and made stylistic changes.

The 2019 amendment added "any of the following orders entered within the past five (5) years" in the introductory language of (a)(2)(F)(i); added the (a)(2)(F)(i)*(a)* designation, and redesignated former (a)(2)(F)(i)*(a)* through *(e)* and *(g)* as (a)(2)(F)(i)*(a)(1)* through *(6)*; deleted "within the past five (5) years" preceding "by" in (a)(2)(F)(i)*(a)*; deleted former (a)(2)(F)(i)*(f)*; added "or" in (a)(2)(F)(i)*(a)(6)*; added (a)(2)(F)(i)*(b)*; and substituted "or" for "and" at the end of (a)(2)(F)(ii)*(a)*.

The 2021 amendment inserted "a" in (c)(1).

CASE NOTES

Relation to Other Law.

Individual investor and an LLC failed to meet their burden of proving that an investment adviser ("debtor") who declared Chapter 7 bankruptcy owed them debts that were nondischargeable under 11 U.S.C.S. § 523 because he made false representations or acted willfully and maliciously in an attempt to injure them when he advised them to purchase certificates of deposit that were issued by a foreign bank, were not insured by the FDIC, and were issued as part of a Ponzi scheme, and the fact that the Arkansas Securities Department initiated an action to revoke the debtor's registration under this section was not sufficient, in and of itself, to show that he owed plaintiffs debts that were nondischargeable under § 523. McGraw v. Collier (In re Collier), 497 B.R. 877 (Bankr. E.D. Ark. 2013).

23-42-309. Protection of vulnerable adults from financial exploitation — Definitions.

(a) As used in this section:

(1) "Agencies" means:

(A) The Adult Protective Services Unit of the Department of Human Services; and

(B) The Securities Commissioner;

(2) "Financial exploitation" means:

(A) The wrongful or unauthorized taking, withholding, appropriation, or use of funds, assets, or property of a vulnerable adult; or

(B) Any act or omission made by a person, including through the use of a vulnerable adult's power of attorney, guardianship, or conservatorship, to:

(i) Obtain control, through deception, intimidation, or undue influence, over the vulnerable adult's funds, assets, or property that results in depriving the vulnerable adult of rightful ownership, use, benefit, access to, or possession of his or her money, assets, or property; or

(ii) Convert funds, assets, or property of a vulnerable adult to deprive the vulnerable adult of the rightful ownership, use, benefit, access to, or possession of his or her funds, assets, or property;

(3) "Person reasonably associated with the vulnerable adult" means:

(A) A person permitted to transact business on the account of a vulnerable adult;

(B) A person named as a beneficiary on an account of a vulnerable adult; or

(C) An immediate family member of a vulnerable adult;

(4) "Qualified individual" means an agent, an investment adviser representative, or an individual associated with a broker-dealer or investment adviser who serves in a supervisory, compliance, or legal capacity as part of the job duties of the individual; and

(5) "Vulnerable adult" means a person who is:

(A) Sixty-five (65) years of age or older;

(B) Subject to supervision by the Adult Protective Services Unit of the Department of Human Services; or

(C) Otherwise considered susceptible to financial exploitation.

(b) If a qualified individual reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, the qualified individual:

(1) Should promptly disclose this information to the agencies;

(2) Who in good faith and exercising reasonable care makes a disclosure under subdivision (b)(1) of this section and shares documentation, including books and records, related to the suspected activity shall be immune from administrative or civil liability that might otherwise arise from the disclosure or for any failure to notify the vulnerable adult of the disclosure; and

(3)(A) May notify a third party previously designated by the vulnerable adult or a person reasonably associated with the vulnerable adult.

(B) Disclosure shall not be made to any designated third party or a person reasonably associated with the vulnerable adult that is suspected of financial exploitation or other abuse of the vulnerable adult.

(C) If a qualified individual makes a disclosure under subdivision (b)(3)(A) of this section, the qualified individual is immune from any administrative or civil liability that might otherwise arise from the disclosure.

(c)(1) A broker-dealer or investment adviser may delay a disbursement or transaction from an account of a vulnerable adult or an account on which a vulnerable adult is a current beneficiary if:

(A) Financial exploitation is suspected;

(B) After an internal review of a requested disbursement or transaction, the broker-dealer, investment adviser, or qualified individual reasonably believes that the requested disbursement may result in financial exploitation; and

(C) The broker-dealer or investment adviser immediately or within two (2) business days after the requested disbursement or transaction:

(i) Provides to all parties authorized to transact business on the account written notification of the delay and the reason for the delay, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation;

(ii) Notifies the agencies; and

(iii) Continues its internal review of the suspected or attempted financial exploitation, as necessary, and reports the investigation's results to the agencies within seven (7) business days after the requested disbursement or transaction.

(2)(A) Except as provided under subdivision (c)(2)(B) of this section, a delay of a disbursement or transaction under this section shall expire upon the earliest of:

(i) A determination by the broker-dealer or investment adviser that the disbursement or transaction will not result in financial exploitation; or

(ii) Fifteen (15) business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds or transaction.

(B) If either of the agencies requests that the broker-dealer or investment adviser extend the delay of disbursement or transaction, the delay shall expire:

(i) No more than twenty-five (25) business days after the date on which the broker-dealer or investment adviser first delayed disbursement or transaction of the funds;

(ii) Upon the termination by the agencies of the hold on the disbursement or transaction; or

(iii) As directed by an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the disbursement or transaction of funds or may order other protective relief upon application by:

(A) The agencies;

(B) The broker-dealer or investment adviser that initiated the delay of disbursement or transaction under subdivision (c)(1) of this section; or

(C) Any other interested party.

(4) If a broker-dealer or investment adviser delays a disbursement or transaction under subdivision (c)(1) of this section in good faith and exercising reasonable care and complies with this subsection, the broker-dealer or investment adviser is immune from any administrative or civil liability that might otherwise arise from the delay in a disbursement or transaction.

(d)(1) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation, either as part of a referral or pursuant to an investigation, to:

(A) The agencies; and

(B) A law enforcement agency or entity.

(2) The records may include historical records as well as records relating to recent transactions that may comprise financial exploitation.

(3) The records, materials, data, and information made available by a broker-dealer or investment adviser under subdivision (d)(1) of this

section are confidential and are not subject to examination or disclosure as public information under the Freedom of Information Act of 1967, § 25-19-101 et seq., but may be shared among the agencies and a law enforcement agency or entity in order to investigate or pursue appropriate action in the protection of vulnerable adults from financial exploitation.

(e) This section does not limit or otherwise impede the authority of the commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by this chapter.

History. Acts 2017, No. 668, § 21; 2021, No. 533, § 4.

Amendments. The 2021 amendment deleted former (a)(2); redesignated (a)(3) as (a)(2); added (a)(3)-(5); substituted "vulnerable adult" for "eligible adult" and "qualified individual" for "individual" throughout the section; inserted "and shares documentation, including books and records, related to the suspected activity" in (b)(2); added "or a person reasonably associated with the vulnerable adult" twice in (b)(3); inserted "or transaction" throughout (c); substituted "The agencies" for "An agency charged with administering state adult protective services law" in (d)(1)(A); and added "but may be shared among the agencies and a law enforcement agency or entity in order to investigate or pursue appropriate action in the protection of vulnerable adults from financial exploitation" at the end of (d)(3).

Subchapter 4 — Registration of Securities

SECTION.

23-42-404. Registration statements generally.

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b)(1) Every person filing a registration statement shall pay a filing fee of one-tenth percent (0.1%) of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than one hundred fifty dollars ($150) nor more than two thousand dollars ($2,000). Any portion of the fee in excess of one thousand dollars ($1,000) shall be designated as special revenues and shall be deposited into the Securities Department Fund. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under § 23-42-405, the Securities Commissioner shall retain one hundred fifty dollars ($150) of the filing fee.

(2) Sales of securities in excess of the amount of securities to have been offered in this state shall require the person filing the registration statement to pay a filing fee, calculated in the manner specified in subdivision (b)(1) of this section, for all securities sold. In addition, if the sales are in excess of one hundred five percent (105%) of the amount to have been offered, the person filing the registration statement shall pay a penalty fee of two hundred dollars ($200).

(c) Every registration statement shall specify:

(1) The amount of securities to be offered in this state;

(2) The states in which a registration statement or similar document in connection with the offering has been or is to be filed; and

(3) Any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this chapter or a predecessor act, within five (5) years preceding the filing of a registration statement, may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a nonissuer distribution, information may not be required under § 23-42-403 or subsection (m) of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g)(1) The commissioner may, by rule or order, require as a condition of registration by qualification or coordination that:

(A) Any security issued within the past three (3) years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow;

(B) The proceeds from the sale of the registered security be impounded until the issuer receives a specified amount.

(2) The commissioner may by rule or order determine the conditions of any escrow or impounding required hereunder, but he or she may not reject a depository solely because of location in another state.

(h) The commissioner may require the issuer, as a condition of registration by qualification, to escrow up to ten percent (10%) of the maximum aggregate price of the offering, from the offering proceeds under such terms and conditions as he or she deems appropriate for up to three (3) years from the date of termination of the offering, or to post a corporate surety bond for up to ten percent (10%) of the maximum aggregate price of the offering for up to (3) years from the date of termination of the offering. Any security holder having a right under this chapter against the issuer shall have a right of action against the escrow or corporate surety bond.

(i) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on an approved form of subscription or sale contract and that a signed or conformed copy of each subscription or sale contract be filed with the commissioner or preserved for any period up to three (3) years specified in the rule or order.

(j) Every registration statement is effective for one (1) year from its effective date and, upon renewal, for any longer period during which the

security is being offered or distributed in a nonexempted transaction, except during the time a stop order is in effect.

(k) Renewal registration for the succeeding twelve-month period may be issued upon written application and upon payment of fees as provided by this section for original registration, even though the maximum fee was paid the preceding period, without filing of further statements or furnishing any further information except as requested by the commissioner. All applications for renewal received after the expiration of the previous registration shall be treated as original applications.

(l)(1) All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transactions:

(A) So long as the registration statement is effective, whether by original or renewal registration; and

(B) Between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under § 23-42-405, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one (1) year from the effective date of the registration statement.

(2) A registration statement may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

(m) So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(n) A registration statement relating to a security may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective when the commissioner so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subsection (b) of this section, with respect to the additional securities proposed to be offered.

(o) The State Securities Department is hereby authorized to promulgate such rules necessary to administer the fees, rates, tolls, or charges for services established by this section and § 23-42-304 and is directed to prescribe and collect the fees, rates, tolls, or charges for the services by the department in the manner that may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

(p) The commissioner may consider a registration statement abandoned and withdrawn by the applicant if the:

(1) Registration statement has not been completed within one hundred eighty (180) days after filing with the commissioner; and

(2) Applicant has been notified of the deficiencies in the application and provided a reasonable opportunity to correct the deficiencies.

History. Acts 1959, No. 254, § 11; 1961, No. 248, § 5; 1971, No. 131, § 1; 1973, No. 47, § 9; 1977, No. 493, § 3; 1979, No. 754, § 1; 1983, No. 836, §§ 22-24; A.S.A. 1947, § 67-1245; Acts 1987, No. 449, § 2; 1993, No. 659, §§ 3, 5; 1993, No. 850, § 3, 5; 1995, No. 845, § 23; 1997, No. 173, § 17; 2011, No. 339, § 11; 2019, No. 315, § 2515.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (o).

Subchapter 5 — Regulation of Transactions

23-42-501. Sale of unregistered nonexempt securities.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. John F. Griffee, IV, Guide to Structuring Resales of Restricted Securities Held by Control and Non-Control Holders Under Federal and Arkansas Law, 38 U. Ark. Little Rock L. Rev. 1 (2015).

Frances S. Fendler & A. Heath Abshure, Private Civil Liability Under the Arkansas Securities Act, 38 U. Ark. Little Rock L. Rev. 125 (2016).

23-42-503. Exempted securities.

(a) The following securities are exempted from §§ 23-42-501 and 23-42-502:

(1)(A) Any security, including a revenue obligation, issued or guaranteed by this state, any political subdivision of this state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any certificate of deposit for any of the foregoing.

(B) Any securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933 or that are "mortgage related securities" as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 are not covered securities in the same manner as obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. These instruments, commonly referred to as private mortgage-backed securities, may be exempt from the registration requirements of this chapter, provided that the transaction or the securities are otherwise exempt under this section. This provision specifically overrides the preemption of state law contained in section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98-440, of the United States;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any Canadian province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of any bank organized under the laws of the United States, or any federally insured savings bank, or any bank, savings institution, or trust company organized and supervised under the laws of any state, or any bank holding company regulated under the Bank Holding Company Act of 1956;

(4) Any security issued by and representing an interest in or a debt of any state or federal savings and loan association, or any federally insured savings bank, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state, or any savings and loan holding company regulated by the Office of Thrift Supervision [abolished] or its successor;

(5) Any security issued or guaranteed by any public utility or holding company which is:

(A) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(B) Regulated in respect of its rates and charges by a governmental authority of the United States or any state; or

(C) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(6) Any security of a world-class foreign issuer that meets the qualifications as set forth by rule of the Securities Commissioner;

(7) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, of the United States shall not preempt any provision of this chapter;

(8) Any investment contract or other security issued in connection with an employees' stock purchase, savings, pension, profit sharing, stock bonus, stock option, or similar benefit plan. Plans which do not meet the requirements for qualification under the Internal Revenue Code must file with the commissioner prior to any offer or sale a notice specifying the terms of the plan. The commissioner may by order disallow the exemption within ten (10) days; and

(9) Any security as to which the commissioner by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.

(b) The commissioner may, from time to time, by his or her rules, and subject to any terms, conditions, and fees which may be prescribed therein, add any class of securities to the securities exempted as provided in this section if the commissioner finds that the enforcement of this chapter with respect to the securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering, but no issue of securities shall be exempted under this section when the

aggregate amount at which the issue is offered to the public exceeds one million dollars ($1,000,000).

(c) The following apply to a cooperative organized under the laws of this state as a business corporation but operated as a cooperative, or organized and operated in this state under laws addressing cooperatives, § 2-2-101 et seq., §§ 2-2-401 — 2-2-411, 2-2-413 — 2-2-430, 4-30-101 — 4-30-118, 4-30-201, 4-30-202, and 4-30-204 — 4-30-207, and to any nonprofit cooperative that is qualified to do business in this state:

(1) Any common stock, preferred stock, promissory note, debenture, or other security may be issued to any cooperative member, if no commission or other remuneration is paid in connection with the sale or issuance of the securities or a registered agent is used, after either:

(A) Compliance with subsection (d) of this section; or

(B) Delivery to the cooperative member and filing, with the commissioner, of financial statements of the cooperative for each of the two (2) fiscal years as of a date not earlier than four hundred fifty-five (455) days before the issuance of the security, all of which statements shall have been audited, examined, and certified by independent public accountants to have been prepared in accordance with generally accepted accounting principles consistently maintained by the cooperative during the fiscal years represented by the statements;

(2) Any interest or agreement that qualifies its holder to be a member or other patron of a cooperative or that represents the terms or conditions by which members or other patrons conduct permitted business of a cooperative as set forth in § 2-2-101 et seq.; the Cooperative Marketing Act, § 2-2-401 et seq.; § 4-30-101 et seq.; and §§ 4-30-201 — 4-30-207, or which represents a capital retain, or patronage distribution issued by a cooperative solely to its members or other patrons shall not be considered to be a security under this chapter and shall not be subject to the provisions of this chapter, provided:

(A) The instruments or interests are properly identified and not labeled with the traditional names of investment securities as defined by § 23-42-102(17);

(B) The instruments or interests are not part of a class of instruments or interests regularly bought or sold for investment purposes or for which an active trading market exists. However, this limitation shall not in any way restrict the bona fide pledge of the instruments or interests; and

(C) No commission or other remuneration is paid in connection with the sale or issuance to members or other patrons of the interests and instruments. This exemption shall not apply to those interests or instruments which possess the characteristics of an investment contract or other security as interpreted under the laws of the State of Arkansas; and

(3) The commissioner may render foreign nonprofit cooperatives the privilege afforded Arkansas nonprofit cooperatives set forth in subdivision (c)(2) of this section, provided the foreign cooperative first files supporting documents verifying that it is qualified to do business in

Arkansas, that members have substantially the same rights as members of cooperatives organized under the nonprofit cooperative corporate laws of this state, that the offering is within the scope of subdivision (c)(2) of this section, and any other information which the commissioner deems appropriate.

(d)(1) Before any security may be issued as an exempted security under subdivision (a)(7) of this section or subdivision (c)(1)(A) of this section, a proof of exemption must first be filed with the commissioner, and the commissioner by order shall not have disallowed the exemption within the next ten (10) full business days.

(2) The proof of exemption shall contain a statement of the grounds upon which the exemption is claimed and a designation of the subsection of this section under which the exemption is claimed.

(3) Proofs of exemption which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the proof and afforded a reasonable opportunity to correct the deficiencies.

(4) Each offering shall be effective only for twelve (12) consecutive months.

(5) For every proof of exemption filed with the commissioner under:

(A) Subdivision (a)(7) of this section, there shall be paid to the commissioner a filing fee of five hundred dollars ($500); and

(B) Subdivision (c)(1)(A) of this section, there shall be paid to the commissioner a filing fee of one hundred dollars ($100).

History. Acts 1959, No. 254, § 14; 1961, No. 248, § 7; 1973, No. 47, §§ 12, 14; 1975, No. 697, § 1; 1975, No. 844, §§ 7, 8, 11; 1977, No. 493, §§ 6, 7, 10; 1979, No. 754, §§ 2, 8; 1983, No. 836, §§ 14, 15; 1985, No. 939, §§ 5-8; A.S.A. 1947, §§ 67-1247, 67-1248; Acts 1987, No. 776, § 2; 1989, No. 348, § 1; 1993, No. 1147, § 1807; 1995, No. 845, §§ 25, 26; 1997, No. 173, § 20; 2005, No. 420, § 2; 2017, No. 668, § 22.

Amendments. The 2017 amendment, in the introductory language of (c), substituted "The following apply to a cooperative" for "The following shall apply to farm cooperatives", inserted "laws addressing cooperatives", and substituted "2-2-430" for "2-2-429", "4-30-118" for "4-30-117", and "nonprofit cooperative" for "nonprofit farm cooperative"; rewrote (c)(1) and the introductory language of (c)(2); in (c)(3), deleted "farm" preceding "cooperatives" throughout and deleted "farm" preceding "cooperative corporate"; inserted "or subdivision (c)(1)(A) of this section" in (d)(1); rewrote (d)(5); and made stylistic changes.

23-42-504. Exempted transactions.

(a) The following transactions are exempted from §§ 23-42-501 and 23-42-502:

(1) Any isolated nonissuer transactions, whether effected through a broker-dealer or not, provided that repeated or successive transactions shall be prima facie evidence that the transactions are not isolated nonissuer transactions;

(2) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit

investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, provided at the time of the transaction:

(A) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(B) The security is sold at a price reasonably related to the current market price of the security;

(C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(D) A nationally recognized securities manual designated by rule or order of the Securities Commissioner or a document filed with the United States Securities and Exchange Commission is publicly available through the United States Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval system and contains:

(i) A description of the business and operations of the issuer;

(ii) The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

(iii) An audited balance sheet of the issuer as of a date within eighteen (18) months or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited balance sheets, a pro forma balance sheet; and

(iv) An audited income statement for each of the issuer's immediately preceding two (2) fiscal years, or for the period of existence of the issuer, if in existence for less than two (2) years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statements, a pro forma income statement; and

(E) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2011, unless:

(i) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as it existed on January 1, 2011;

(ii) The issuer and predecessors of the issuer of the security have been engaged in continuous business for at least three (3) years; or

(iii) The issuer of the security has total assets of at least two million dollars ($2,000,000) based on:

(a) An audited balance sheet dated within the past eighteen (18) months; or

(b) In the case of a reorganization or merger of parties with audited balance sheets dated within the past eighteen (18) months

showing total assets of at least two million dollars ($2,000,000), a pro forma balance sheet;

(3) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(4) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(5) Any transactions by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(6) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(7) A transaction by a person exempted from registration under § 23-42-102(3)(B)(v) if the transaction would be lawful in the place of residence of the offeree or purchaser had it occurred there instead of in this state;

(8)(A) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(B) The commissioner may by order, upon petition by any person, determine if the petitioner may be deemed, upon the basis of knowledge, experience, volume, and number of transactions, and other securities background, an "institutional buyer" for purposes of subdivision (a)(8)(A) of this section;

(9)(A) Any transaction pursuant to an offer and sale to not more than thirty-five (35) purchasers other than those designated in subdivision (a)(8) of this section during any period of twelve (12) consecutive months, if:

(i) The seller reasonably believes that all the buyers are purchasing for investment; and

(ii) A commission or other remuneration shall not be paid or given directly or indirectly for soliciting any prospective buyer in this state unless the person receiving any such commission or remuneration is registered under § 23-42-301.

(B) However, the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of purchasers permitted, or waive the conditions in subdivisions (a)(9)(A)(i) and (ii) of this section with or without the substitution of a limitation on remuneration;

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities or warrants, if no commission or other remuneration, other than a standby commission, is paid or given

directly or indirectly for soliciting any security holder in this state, unless the commissioner shall, upon written application, permit the payment of a commission or other remuneration with or without the substitution of a limitation on remuneration;

(11) Any offer, but not a sale, of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;

(12) An offer or sale of a security by an issuer if:

(A) Either of the following applies:

(i) The issuer of the security is a corporation or other business entity organized and operating under the laws of this state and has its principal place of business in Arkansas and the transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), as it existed on January 1, 2017, and Rule 147 of the United States Securities and Exchange Commission, 17 C.F.R. § 230.147, as it existed on January 1, 2017, and as such, the securities shall be offered to and sold only to persons who are residents of this state at the time of purchase; or

(ii) The issuer of the security is a corporation or other business entity with its principal place of business in Arkansas and the transaction meets the requirements of the federal exemption for intrastate offerings in section 28 of the Securities Exchange Act of 1933, 15 U.S.C. § 77z-3, as it existed on January 1, 2017, and Rule 147A of the United States Securities and Exchange Commission, 17 C.F.R. § 230.147A, as it existed on January 1, 2017, and as such, the securities shall be sold only to persons who are residents of this state at the time of purchase;

(B) The sum of all cash and other consideration to be received for all sales of the security in reliance upon the exemption described in this subdivision (a)(12) shall not exceed one million dollars ($1,000,000), less the aggregate amount received for all sales of securities by the issuer within six (6) months after the completion of the offering;

(C) The issuer shall not accept more than five thousand dollars ($5,000) from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 of United States Securities and Exchange Commission Regulation D, 17 C.F.R. § 230.501, as it existed on January 1, 2017;

(D) The issuer should reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security;

(E) A commission or remuneration shall not be paid or given, directly or indirectly, for a person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under this chapter;

(F) The commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition the exemption under this subdivision (a)(12); and

(G) A filing fee of one hundred dollars ($100) shall be paid to the commissioner for every proof of exemption filed with the commissioner under this subdivision (a)(12);

(13) Any other transaction that the commissioner by rule or order exempts as not being necessary or appropriate in the public interest for the protection of investors; and

(14) An offer or sale of a security to a person who is not a resident of this state and is not present in this state, if the offer or sale is not:

(A) A violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present; and

(B) Part of an unlawful plan or scheme to evade this chapter.

(b)(1) Before any transaction shall be executed as an exempted transaction under subdivision (a)(9) or subdivision (a)(10) of this section, except, in the case of dividend reinvestment and stock purchase programs pursuant to subdivision (a)(10) of this section, a proof of exemption must first be filed with the commissioner and the commissioner by order shall not have disallowed the exemption within the next ten (10) full business days. Before any dividend reinvestment and stock purchase program shall be executed as an exempt transaction under subdivision (a)(10) of this section, an initial proof of exemption shall be filed. Thereafter, in every fifth year a proof of exemption must be filed with the commissioner, and the commissioner by order must not have disallowed the exemption within the next ten (10) full business days.

(2) The proof of exemption shall contain a statement of the grounds upon which the exemption is claimed and a designation of the subsection of this section under which the exemption is claimed.

(3) Proofs of exemption which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the proof and afforded a reasonable opportunity to correct such deficiencies.

(4)(A) For every proof of exemption filed with the commissioner under subdivision (a)(9) of this section, there shall be paid to the commissioner a filing fee of one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state, but the fee shall in no case be less than twenty-five dollars ($25.00) or more than five hundred dollars ($500).

(B) For every proof of exemption filed with the commissioner under subdivision (a)(10) of this section, there shall be paid to the commissioner a filing fee of fifty dollars ($50.00).

(C) The commissioner shall have authority under this subsection to amend or rescind the filing fees by rule or order if the commissioner determines that the fee is excessive under the circumstances.

History. Acts 1959, No. 254, § 14; 1961, No. 248, § 7; 1963, No. 512, § 1; 1971, No. 131, § 4; 1973, No. 47, §§ 13, 15; 1975, No. 844, §§ 9, 10, 12; 1977, No. 493, § 8; 1983, No. 836, §§ 20, 25; 1985, No. 610, § 1; 1985, No. 939, § 8; A.S.A. 1947, § 67-1248; Acts 1995, No. 845, § 27; 1997, No. 173, § 21; 1999, No. 363, § 3; 2005, No. 420, § 3; 2009, No. 462, § 12; 2011, No. 339, § 14; 2013, No. 460, § 13; 2017, No. 668, § 23; 2019, No. 110, §§ 3, 4.

A.C.R.C. Notes. Rule 147A of the United States Securities and Exchange Commission became effective April 20, 2017. The 2016 amendments to Rule 147 of the United States Securities and Exchange Commission became effective April 20, 2017.

Amendments. The 2017 amendment, in the introductory language of (a)(2)(D), substituted "Securities Commissioner" for "commissioner" and twice inserted "United States"; substituted "commissioner" for "Securities Commissioner" in (a)(8)(B); inserted present (a)(12); redesignated former (a)(12) as (a)(13); and made stylistic changes.

The 2019 amendment deleted former (a)(8)(A); redesignated the former introductory language of (a)(8) and the former first sentence of (a)(8)(B) as (a)(8)(A); substituted "subdivision (a)(8)(A) of this section" for "this subdivision (a)(8)" in (a)(8)(B); and added (a)(14).

RESEARCH REFERENCES

Ark. L. Notes. Carol Goforth, Crowdfunding in Arkansas? Yes, you can!, 71 Ark. L. Notes 1 (2019).

U. Ark. Little Rock L. Rev. John F. Griffee, IV, Guide to Structuring Resales of Restricted Securities Held by Control and Non-Control Holders Under Federal and Arkansas Law, 38 U. Ark. Little Rock L. Rev. 1 (2015).

23-42-507. Fraud or deceit in connection with offer, sale, or purchase of securities.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Frances S. Fendler & A. Heath Abshure, Private Civil Liability Under the Arkansas Securities Act, 38 U. Ark. Little Rock L. Rev. 125 (2016).

23-42-509. Covered securities.

(a) The Securities Commissioner, by rule or order, may require a notice filing consisting of any or all of the following documents with respect to a covered security under section 18(b)(2) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(2):

(1)(A) Prior to the initial offering of such a covered security in this state, all documents that are part of a current federal registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a fee in the amount of one-tenth percent (0.1%) of the maximum aggregate offering price at which the covered securities are to be offered in this state, but the fee shall in no case be less than one hundred fifty dollars ($150) nor more than two thousand dollars ($2,000). Any portion of the fee in excess of one thousand dollars ($1,000) shall be designated as special revenues and shall be deposited into the Securities Department Fund. When a notice filing is withdrawn before the effective date, the

commissioner shall retain one hundred fifty dollars ($150) of the filing fee.

(B) Sales of the covered securities in excess of the amount of covered securities to have been offered in this state shall require the person making the notice filing to pay a fee, calculated in the manner specified in subdivision (a)(1)(A) of this section, for all securities sold. In addition, if the sales are in excess of one hundred five percent (105%) of the amount to have been offered, the person making the notice filing shall pay a penalty fee of two hundred dollars ($200).

(C) The initial notice filing of an investment company, as defined in the Investment Company Act of 1940, shall be effective for a period commencing upon the commissioner's receipt of the notice filing, or, if not yet effective with the United States Securities and Exchange Commission, concurrently with the United States Securities and Exchange Commission effectiveness, and ending two (2) months after the investment company's fiscal year end. Thereafter, the investment company must renew the notice filing by submitting the appropriate forms and documents as filed with the United States Securities and Exchange Commission, along with the appropriate fee, calculated in the manner specified in subdivision (a)(1) of this section, with respect to the additional securities proposed to be offered, within two (2) months after the expiration of the registrant's fiscal year end.

(D) The notice filing of a unit investment trust, as defined in the Investment Company Act of 1940, shall be effective for one (1) year from the date of effectiveness granted by the United States Securities and Exchange Commission;

(2) After the initial offer of such covered securities in this state, all documents that are part of an amendment to a current federal registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933;

(3) An annual or periodic report of the value of the covered securities offered or sold in this state as necessary to compute fees.

(b) A notice filing relating to a covered security may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective upon receipt by the commissioner. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subdivision (a)(1) of this section, with respect to the additional securities proposed to be offered.

(c)(1) With respect to a covered security under section 18(b)(4)(F) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(F), as it existed on January 1, 2017, the commissioner may by rule or order require that no later than fifteen (15) days after the first sale of a covered security, the issuer:

(A) File a notice on United States Securities and Exchange Commission Form D;

(B) Submit a consent to service of process signed by the issuer; and

(C)(i) Pay a fee in the amount of one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state.

(ii) The fee shall be at least one hundred dollars ($100) and no more than five hundred dollars ($500).

(2) After the initial offer of the covered security in this state, any amendment to United States Securities and Exchange Commission Form D filed with the United States Securities and Exchange Commission under the Securities Act of 1933 shall be filed concurrently with the commissioner.

(3)(A) A notice filing for a covered securities offering under subdivision (c)(1) of this section is effective for twelve (12) months from the date of the initial filing with the commissioner.

(B) A notice filing for a covered securities offering under subdivision (c)(1) of this section shall be renewed on or before the anniversary date of the initial notice filing, or the notice filing shall terminate.

(C) To renew a notice filing, an issuer of a covered securities offering shall:

(i) Submit the appropriate forms and documents as filed with the United States Securities and Exchange Commission under the Securities Act of 1933, 15 U.S.C. § 77a et seq.; and

(ii) Pay a fee of one hundred dollars ($100).

(4)(A) If a notice filing required to be filed under subdivision (c)(1) of this section is completed by an issuer at least fifteen (15) days after, but within one (1) year of, the first sale of the covered securities in this state, then the issuer shall pay a late notice filing penalty of five hundred dollars ($500).

(B) If a notice filing is filed more than one (1) year after the first sale of the covered securities in this state, then the issuer shall pay a late notice filing penalty of one thousand dollars ($1,000).

(d)(1) With respect to a covered security under section 18(b)(4)(C) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(C), if the issuer's principal place of business is located in this state or purchasers of fifty percent (50%) or greater of the aggregate amount of the offering are residents of this state, the commissioner may by rule or order require the issuer to:

(A) File concurrently with the commissioner the information required to be filed with the United States Securities and Exchange Commission under section 4A(b) of the Securities Act of 1933, 15 U.S.C. § 77d-1(b); and

(B) Pay a fee of one hundred dollars ($100).

(2)(A) A notice filing for a covered securities offering under subdivision (d)(1) of this section is effective for twelve (12) months from the date of the initial filing with the commissioner.

(B) A notice filing for a covered securities offering under subdivision (d)(1) of this section shall be renewed on or before the anniversary date of the initial notice filing or the notice filing shall terminate.

(C) To renew a notice filing, an issuer of a covered securities offering shall:

(i) Submit the appropriate forms and documents as filed with the United States Securities and Exchange Commission under the Securities Act of 1933, 15 U.S.C. § 77a et seq.; and

(ii) Pay a fee of one hundred dollars ($100).

(e)(1) Except as provided under subsection (c) or subsection (d) of this section, with respect to a covered security under section 18(b)(3) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(3), as it existed on January 1, 2019, or section 18(b)(4) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4), as it existed on January 1, 2019, the commissioner may by rule or order require the issuer to:

(A) Concurrently file with the commissioner any document or information required to be filed with the United States Securities and Exchange Commission; and

(B) Pay a fee of one hundred dollars ($100).

(2)(A) A notice filing for a covered securities offering under subdivision (e)(1) of this section is effective for twelve (12) months from the date of the initial filing with the commissioner.

(B) A notice filing for a covered securities offering under subdivision (e)(1) of this section shall be renewed on or before the anniversary date of the initial notice filing, or the notice filing shall terminate.

(C) To renew a notice filing, an issuer of a covered securities offering shall:

(i) Submit the appropriate forms and documents as filed with the United States Securities and Exchange Commission under the Securities Act of 1933, 15 U.S.C. § 77a et seq.; and

(ii) Pay a fee of one hundred dollars ($100).

(f) The commissioner may issue a stop order suspending the offer and sale of a covered security, except a covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that:

(1) The order is in the public interest; and

(2) A failure to comply with this section exists.

(g) The commissioner by rule or order may waive any or all of the provisions of this section.

History. Acts 1997, No. 173, § 23; 1999, No. 363, § 4; 2013, No. 460, § 14; 2017, No. 668, §§ 24-26; 2019, No. 110, §§ 5-8.

Amendments. The 2017 amendment, in the introductory language of (c)(1), substituted "18(b)(4)(F)" for "18(b)(4)(E)" and inserted "15 U.S.C. § 77r(b)(4)(F), as it existed on January 1, 2017"; and rewrote (d)(2) and (e).

The 2019 amendment rewrote (c)(3); added (c)(4); added (d)(2), and redesignated former (d) as (d)(1); added (e)(2), and redesignated former (e) as (e)(1); and substituted "January 1, 2019" for "January 1, 2017" twice in (e)(1).

CHAPTER 44

COMMODITIES FUTURES

23-44-107. Exchanges and boards of trade — Organization — Records.

(a) There may be organized, in any city, town, or municipality in the State of Arkansas, voluntary associations to be known as cotton exchanges, grain exchanges, boards of trade, or similar institutions to receive and post quotations on cotton, grains, stocks, bonds, and other commodities for the benefit of their members and other persons engaged in the production of cotton, grain, and other commodities.

(b) The associations shall be composed of not fewer than twenty-five (25) active members and shall adopt a uniform set of rules not inconsistent with the laws of Arkansas and of the United States.

(c) They shall open their books to the inspection of proper courts and officers of the law when required.

History. Acts 1929, No. 208, § 8; Pope's Dig., § 3349; A.S.A. 1947, § 68-1008; Acts 2019, No. 315, § 2516.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

CHAPTER 45

ARKANSAS BANKING CODE OF 1997

23-45-102. Definitions.

(a) Subject to other definitions contained in subsequent sections of the Arkansas Banking Code of 1997, and unless the context otherwise requires, in the Arkansas Banking Code of 1997:

(1) "Affiliate" means, with respect to a specified person, a person that controls, is controlled by, or is under common control with another person;

(2) "Arkansas bank" means a bank whose home state is Arkansas;

(3) "Arkansas bank holding company" means a bank holding company that controls one (1) or more state banks. As used in this subdivision (a)(3), "control" has the meaning set forth in 12 U.S.C. § 1841(a)(2);

(4) "Arkansas Banking Code of 1997" means the Arkansas Banking Code of 1997, chapters 45-50 of this title;

(5)(A) "Bank" means a state bank or a national bank or an out-of-state state-chartered bank that has received a certificate of authority under § 23-48-1001.

(B) "Bank" shall also include any foreign bank organized under the laws of a territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(6)(A) "Bank holding company" means any company, foreign or domestic, including a bank:

(i) That directly or indirectly owns, controls, or holds with power to vote twenty-five percent (25%) or more of the voting shares of any bank;

(ii) That controls in any manner the election of a majority of the directors of any bank; or

(iii) For the benefit of whose shareholders or members twenty-five percent (25%) or more of the voting shares of any bank or a bank holding company is held by trustees.

(B) Notwithstanding the foregoing:

(i) No company shall be a bank holding company by virtue of its ownership or control of shares that are acquired by it in connection with its underwriting of securities and that are held only for such period of time as will permit the sale thereof upon a reasonable basis; and

(ii) No company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights of shares acquired in the course of the solicitation.

(C) As used in this definition of "bank holding company", "company" means any corporation, limited liability company, or business trust doing business in this state but does not include any corporation the majority of the shares of which are owned by the United States or by any state;

(7) "Banking board" means the State Banking Board;

(8) "Bank premises" includes the state bank's or subsidiary trust company's main office site, all branch and other lawful office sites, the main office building and all other branch and other lawful office buildings, any or all of which may have additional space for occupancy by tenants, and any parking areas or parking structures that constitute adjuncts to any of the state bank or subsidiary trust company property;

(9) "Bank supervisory agency" means:

(A) Any agency of another state with primary responsibility for chartering and supervising banks; and

(B) The United States Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and their successors;

(10) "Capital base" means the sum of capital, surplus, and undivided profits, plus any additions and less any subtractions which the Bank Commissioner may by rule prescribe;

(11) [Repealed.]

(12) "Commissioner" means the Bank Commissioner;

(13) "Court" means a court of competent jurisdiction;

(14) "Day" means a calendar day;

(15) "Department" means the State Bank Department of this state;

(16) "Department rules" or "department rule" means rules promulgated by the commissioner with the approval of the State Banking Board;

(17) "Deposit" and "deposit account" mean the unpaid balance of money or its equivalent received or held by a bank in the usual course of its banking business and which represents a liability of the bank, for which it has given or is obligated to give credit, either conditionally or unconditionally, to a checking, savings, time or similar account, or that is evidenced by its certificate of deposit or similar certificate or a check or draft drawn against a deposit account and certified by the bank or a draft or cashier's, officer's, or traveler's check or money order or similar instrument on which the bank is primarily liable, and that has not been paid and other obligations or instruments of a bank that may be included in the definition of "deposit" or "deposit account" in department rules;

(18)(A) "De novo charter" means a charter for a bank that has been in existence for less than five (5) years, but it does not include a charter that is issued in connection with the acquisition of assets or liabilities from a predecessor financial institution.

(B) A bank resulting from the conversion of a savings and loan association to a bank, from the conversion of a state bank to a national bank, or from the conversion of a national bank to a state bank shall be deemed to have been in existence, for the purpose of determining whether it has a de novo charter, from the date the converting institution came into existence;

(19) "Depository institution" means any bank, savings and loan association, state or federal credit union, or any corporation that the commissioner determines to be operating in substantially the same manner as such entities;

(20) "Federal financial institutions' regulatory agency" means the Federal Reserve System, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the United States Comptroller of the Currency, or the Office of Thrift Supervision [abolished], or their successors;

(21) "Financial institution" means any state bank, registered out-of-state bank, bank holding company, trust company, or subsidiary trust company;

(22) "Home state" means:

(A) With respect to a state-chartered bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located; and

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. § 3103(c);

(23) "Home state regulator" means, with respect to an out-of-state state-chartered bank, the bank supervisory agency of the state in which the bank is chartered;

(24) "Host state" means a state other than the home state of a bank in which the bank maintains or seeks to establish and maintain a branch;

(25) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(B) The purchase of all or substantially all of the assets including all or substantially all of the branches and the assumption of all or substantially all of the liabilities of a bank whose home state is different from the home state of the acquiring bank;

(26) "Main banking office" or "main office", with respect to a bank, means the main banking office designated or provided for in the articles of incorporation of a state bank, and the main office designated or provided for in the articles of association of a national bank, at such identified location as shall have been or as hereafter may be approved by the commissioner, in the case of a state bank, or by the appropriate federal regulatory agency, in the case of a national bank;

(27) "Merging bank" means a bank that is a party to a merger or an interstate merger transaction and that is not the resulting bank;

(28) "National bank" means a national banking association organized pursuant to 12 U.S.C. §§ 21—215(b);

(29) "National trust company" means a company organized under the laws of the United States to conduct trust business and business incidental to trust business in this state or of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company that also owns, directly or indirectly, an affiliated bank as defined in § 23-47-801 et seq.;

(30) "Order" means all or any part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, by the commissioner or the State Banking Board, of any matter other than the making of rules of general application;

(31) "Out-of-state bank" means a bank whose home state is any state other than Arkansas;

(32) "Out-of-state state-chartered bank" means any bank chartered under the laws of any state other than Arkansas;

(33) "Person" means an individual, corporation, partnership, joint venture, trust, estate, limited liability company or other unincorporated association, or any other legal or commercial entity;

(34) "Predecessor financial institution" means a depository institution whose charter ceased to exist in connection with the purchase of its assets or the assumption of its liabilities by a successor bank;

(35) "Registered out-of-state bank" means an out-of-state bank that has a certificate of authority pursuant to the terms of § 23-48-1001 et seq.;

(36) "Resulting bank" means:

(A) One (1) or more banks created from a merger or conversion; or

(B) The bank purchasing over fifty percent (50%) of the assets or assuming over fifty percent (50%) of the liabilities of another depository institution in a purchase or assumption transaction or an interstate merger transaction;

(37) "Safe deposit box" means a safe, box, or other receptacle for the safekeeping of property, that is located on a bank's premises and leased by the bank to a lessee;

(38) "Savings and loan association" means a corporation carrying on the business of a savings and loan association or a building and loan association under a charter issued by this state, or any federal savings association or federal savings bank which is chartered under federal law;

(39) "State bank" means:

(A) A corporation created pursuant to either Acts 1913, No. 113, or Acts 1969, No. 179, or pursuant to any predecessor or successor act or acts of either of the foregoing, and existing and authorized under the laws of this state on May 30, 1997, to engage in a general commercial banking business; and

(B) A corporation organized under the provisions of this chapter and authorized thereunder to engage in a general commercial banking business; and

(40) "Subsidiary trust company" means a corporation organized under the Arkansas Business Corporation Act, § 4-27-101 et seq., and authorized by the commissioner pursuant to § 23-47-801 et seq. or the Bank Holding Company Subsidiary Trust Company Formation Act of 1989, § 23-32-1901 et seq. [repealed], to conduct trust business and business incidental to trust business in this state, of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company that also owns, directly or indirectly, an affiliated bank as that term is defined in § 23-47-801 et seq.

(b) For the purposes of defining, "home state", "host state", "home state regulator", "out-of-state bank", and "out-of-state state-chartered bank", the term "state" means any state of the United States, the District of Columbia, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Northern Marianas Islands.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 1; 1999, No. 113, § 1; 2003, No. 860, § 12; 2007, No. 170, §§ 3, 4; 2017, No. 426, § 11; 2019, No. 315, §§ 2517-2519.

Amendments. The 2017 amendment repealed (a)(11).

The 2019 amendment substituted "rule" for "regulation" in (a)(10) and (a)(16); and substituted "rules" for "regulations" in (a)(16) twice, in (a)(17), and in (a)(30).

CHAPTER 46

STATE BANK DEPARTMENT AND STATE BANKING BOARD

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

23-46-101. Confidential records.

(a) Notwithstanding the Freedom of Information Act of 1967, § 25-19-101 et seq., the following records of the State Bank Department shall be confidential and shall not be exhibited or revealed to the public except as stated in this section or in accordance with department rules:

(1) All examination reports filed with the department;

(2) All records disclosing information obtained from examinations;

(3) Investigations and reports revealing facts concerning a financial institution or the customers of a financial institution; and

(4) All personal financial statements submitted to the department for any purpose.

(b) Notwithstanding any provision of this section to the contrary, records deemed confidential in accordance with this section may be disclosed, in the Bank Commissioner's discretion, as follows:

(1) Under a validly issued subpoena and in the interest of justice, the commissioner may waive the privilege created in this section and produce examination reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction when the order is designed to protect the confidential nature of the information so disclosed from public dissemination;

(2) Official orders of the department may be disclosed within the discretion of the commissioner if the commissioner makes a determination that such a disclosure would not give advantage to a competitor or adversely affect the safety and soundness of the financial institution; and

(3) To state and federal regulatory agencies with jurisdiction over financial institutions or entities engaging in financial activities, including, but not limited to, insurance and securities brokerage and underwriting.

(c) The commissioner shall have the power to promulgate rules with regard to disclosure of confidential information.

History. Acts 1997, No. 89, § 1; 2001, No. 1056, § 1; 2003, No. 860, § 13; 2017, No. 426, § 12; 2019, No. 315, §§ 2520, 2521.

Amendments. The 2017 amendment, in (a)(3), substituted "or the customers of a financial institution" for "a capital development company, or the customers of these organizations".

The 2019 amendment substituted "rules" for "regulations" in the introductory language of (a) and in (c).

Subchapter 2 — State Bank Department

Effective Dates. Acts 2015 (1st Ex. Sess.), Nos. 7 and 8, § 153: July 1, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Building Authority, the Arkansas Science and Technology Authority, the Department of Rural Services, and the Division of Land Surveys of the Arkansas Agriculture Department are inefficiently structured; that this inefficient structuring causes an excessive and unnecessary cost to the taxpayers of the this state; and that this act is essential to alleviating that financial burden. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2015."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

23-46-201. Creation of State Bank Department.

There is created and established, at the seat of government of this state, a department to be known as the "State Bank Department". The State Bank Department shall be a division of the Department of Commerce.

History. Acts 1997, No. 89, § 1; 2019, No. 910, § 578.

Amendments. The 2019 amendment added "of State Bank Department" in the section heading; and added the second sentence.

23-46-202. [Repealed.]

A.C.R.C. Notes. This section was repealed by Acts 2019, No. 910, § 579. The repeal of this section by Acts 2019, No. 910, § 579, supersedes the amendment of this section by Acts 2019, No. 910, § 6253. Acts 2019, No. 910, § 6253, amended former subsection (b) to read as follows: "(b) The State Bank Department is authorized and empowered to obtain the necessary funds to accomplish the purposes stated in subsection (a) of this section from any source or sources necessary, including without limitation contracting with the Building Authority Division or the Arkansas Development Finance Authority to provide for the issuance of bonds under the State Agencies Facilities Acquisition Act of 1991, § 22-3-1401 et seq., or the Arkansas Development Finance Authority Act, § 15-5-101 et seq., § 15-5-201 et seq., and § 15-5-301 et seq."

Publisher's Notes. This section, concerning offices, was repealed by Acts 2019, No. 910, § 579, effective July 1, 2019. The section was derived from Acts 1997, No. 89, § 1; 2007, No. 426, § 1; 2015 (1st Ex. Sess.), No. 7, § 58; 2015 (1st Ex. Sess.), No. 8, § 58; 2019, No. 910, § 6253.

23-46-203. Seal — Evidentiary effect — Fees.

(a) An appropriate seal shall be procured to be the official seal for the State Bank Department.

(b) Every paper executed by the Bank Commissioner in pursuance of the authority conferred upon him or her by law and sealed with the seal of the department or certified by the department shall be received in evidence and recorded in the proper recording offices in the same manner as deeds regularly acknowledged.

(c)(1) Whenever it is necessary for the commissioner to approve any instrument and to affix the official seal thereto, the commissioner shall charge a fee as provided by rule for affixing his or her approval and the official seal to the instrument.

(2) Copies of all records and papers in the office of the department certified by the commissioner and authenticated by the seal shall be received in evidence in all cases equally and of like effect as the originals thereof.

(3) Whenever it is proper to furnish a copy of any paper filed in the department and to certify that paper, the commissioner may charge a fee as provided by department rule.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2522.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (c)(1) and (c)(3).

23-46-204. Bank Commissioner — Appointment and removal.

(a) The Governor, by and with the advice and consent of the Senate, shall appoint a Bank Commissioner who shall:

(1) Be a resident of this state;

(2) Be at least thirty (30) years of age; and

(3) Have not less than five (5) years' experience either in practical banking or in the bank department of a state.

(b) The commissioner shall be the head of the State Bank Department and shall hold his or her office for the term of four (4) years beginning from the date of actual appointment by the Governor and expiring four (4) years from that date and until a successor is appointed.

(c) The commissioner may be removed by the Governor from office for neglect of duty, malfeasance, misfeasance, extortion or corruption in office, incompetency, or mental or physical disability to such an extreme as to render the commissioner unable or unfit for the discharge of his or her duties, or for any offense involving moral turpitude while in office committed under color of or connected with such an office.

(d) In the event there shall be an inability to serve in the office caused by death, suspension, removal, disability, disqualification, or resignation of the commissioner, a deputy commissioner previously designated by the commissioner shall exercise the powers and perform the duties of the commissioner until a successor is appointed by the Governor, with the advice and consent of the Senate, who shall serve for the remainder of the unexpired term fixed by law.

(e) The commissioner shall report to the Secretary of the Department of Commerce.

History. Acts 1997, No. 89, § 1; 2019, No. 910, § 580.

Amendments. The 2019 amendment added (e).

23-46-205. Bank Commissioner — Powers and duties.

(a) The Bank Commissioner shall be charged with the general supervision of financial institutions, the execution of all laws passed by the State of Arkansas relating to the organization, operations, inspection, supervision, control, liquidation, and dissolution of banks, bank holding companies, subsidiary trust companies, and the general commercial banking business of Arkansas, and such other duties as prescribed by law.

(b)(1) The commissioner shall have the power to issue such rules as may be necessary or appropriate to carry out the intent and purposes of all those laws and to issue cease and desist orders against any financial institution, or an officer, director, or employee of any financial institution, found to be violating federal banking laws or regulations, violating the banking laws of this state or State Bank Department rules, violating any regulatory agreement, or jeopardizing the safety and soundness of any financial institution.

(2)(A) The commissioner may issue rules only with the approval and consent of the State Banking Board, but he or she shall have the power to issue cease and desist orders upon his or her own motion.

(B) Nothing in this section shall be construed to curtail the commissioner's power to issue emergency rules with the approval and consent of the board.

(3)(A) Any person subject to a cease and desist order issued by the commissioner who refuses or fails to comply with the terms of the order may be assessed a monetary penalty for the failure to comply with the provisions of the cease and desist order after a ten-day notice given by the commissioner to the institution or person subject to the order.

(B) The amount of the monetary penalty shall not exceed one thousand dollars ($1,000) per day of violation against each institution and each officer, director, or employee contributing to the institution's or the individual's failure to comply with the provisions of the cease and desist order.

(C) Subject to such a limitation, the amount of the monetary penalty shall be determined by the commissioner.

(4) The commissioner has grounds for and may issue a cease and desist order for the permanent or temporary removal of an officer, director, employee, agent, or any other person participating in the affairs of or otherwise connected with a financial institution, or any affiliate thereof, subject to the supervision of the commissioner from service to any institution or affiliate subject to the supervision of the commissioner if he or she is found by the commissioner to be or to have been:

(A) Violating state or federal law, rules and regulations of a federal financial institution's regulatory agency, or State Bank Department rules;

(B) Acting incompetently, recklessly, or dishonestly;

(C) Indicted of a crime involving moral turpitude; or

(D) Otherwise impairing the safety and soundness of the financial institution.

(5)(A) Any person aggrieved and directly affected by an order of the commissioner issued pursuant to this section is entitled to judicial review.

(B) A person so aggrieved may seek judicial review by petition to a circuit court having jurisdiction in the matter.

(C) The petition must be filed within thirty (30) days from the date of issuance of the order.

(D) If no petition for review is filed within thirty (30) days from the date of issuance of the order, the order may not be appealed and is permanently binding upon the person until terminated by the commissioner.

(c) Department rules shall be distributed, in form and method selected by the commissioner, to all state banks chartered in the State of Arkansas.

(d) In addition to other powers, the commissioner shall have the power and authority to:

(1) Inspect and copy all books, records, and other information relating to the financial institutions he or she regulates;

(2) Restrict withdrawal of deposits from state banks under extraordinary circumstances;

(3) Subpoena witnesses, compel their attendance, require production of evidence, and administer oaths;

(4) Approve or disapprove applications for new state bank charters or branch facilities in connection with failed institutions as provided in § 23-48-511;

(5) Approve or disapprove applications for voluntary liquidations as provided in § 23-49-119;

(6) Define any term or phrase used in the Arkansas Banking Code of 1997 which is not defined by the Arkansas Banking Code of 1997;

(7) Issue orders or declaratory statements, disseminate information, and otherwise exercise discretion to effectuate the purposes of the Arkansas Banking Code of 1997 and all laws described in subsection (a) of this section, and to interpret and implement the provisions of those laws consistently with such purposes;

(8) Authorize state banks to engage in any banking activity in which national banks are authorized or may hereafter be authorized by federal legislation or regulations to engage;

(9) Cooperate with federal financial institutions' regulatory agencies;

(10)(A) Perform preemployment state criminal background checks through the Division of Arkansas State Police and preemployment federal criminal background checks through the Federal Bureau of Investigation on all applicants selected for employment as examiners with the department.

(B) The federal background check shall include taking fingerprints of the applicant.

(C) The applicant shall sign a release authorizing the Division of Arkansas State Police and the Federal Bureau of Investigation to disclose criminal history information about the applicant to the department.

(D) The commissioner shall treat the information as confidential and shall disclose the information only to the applicant; and

(11) Approve and execute on behalf of the department:

(A) An agreement issuing bonds under § 23-46-202; and

(B) Any documents necessary for issuing bonds under § 23-46-202.

(e)(1) As soon as practicable after acceptance of any application referred to either in the Arkansas Banking Code of 1997 or in department rules for filing, regardless of whether the application is of a type referred to in § 23-46-403, and receipt of the filing fee therefor, the commissioner shall cause the merits of the application to be investigated.

(2) The investigation shall enable the commissioner to determine the fitness of the applicants and shall address all questions which bear directly or indirectly upon the appropriateness of granting the application and the need from the public standpoint for granting the application.

(3) To the extent that the commissioner deems it appropriate, the scope of the commissioner's investigation of any application may include:

(A) The investigation of those matters described in § 23-48-304 pertaining to applications for new state bank charters; and

(B)(i) The performance of state criminal background checks through the Division of Arkansas State Police and federal criminal background checks through the Federal Bureau of Investigation.

(ii) The federal background check shall include the taking of fingerprints.

(iii) The applicant shall sign a release authorizing the Division of Arkansas State Police and the Federal Bureau of Investigation to disclose criminal history information about the applicant to the department.

(iv) The commissioner shall treat the information as confidential and shall disclose the information only to the applicant.

(v) The background checks shall be used to determine the applicant's fitness to participate in the affairs of a state bank.

(f) A criminal background check obtained under this section shall be destroyed by the commissioner within six (6) months of the commissioner's receipt of the background check.

History. Acts 1997, No. 89, § 1; 2005, No. 1528, § 1; 2007, No. 426, § 2; 2019, No. 315, §§ 2523, 2524; 2019, No. 910, § 581.

Amendments. The 2019 amendment by No. 315, in (b)(1), deleted "and regulations" following the first occurrence of "rules", and substituted the second occurrence of "rules" for "regulations"; deleted "or regulations" following "rules" in (b)(2)(A); deleted "and regulations" following "rules" in (b)(2)(B); and substituted "rules" for "regulations" in (b)(4)(A), (c), and (e)(1).

The 2019 amendment by No. 910 substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (d)(10)(A) and (d)(10)(C).

23-46-206. Employment and duties of staff generally.

(a)(1) The Bank Commissioner, in consultation with the Secretary of the Department of Commerce, shall employ from time to time the assistants, examiners, clerks, stenographers, counsel, and other personnel as he or she may find necessary to properly and efficiently discharge the duties of his or her office.

(2) The commissioner shall be authorized to set minimum qualifications for these persons and to fix their levels of compensation within the limitations of the numbers of employees and the appropriations for their salaries as provided from time to time by acts of the General Assembly, provided he or she shall incur no expense until an appropriation shall have been made therefor nor in excess of the revenues of the State Bank Department.

(b) Counsel employed by the commissioner shall advise the commissioner in all legal matters affecting the State Bank Department.

(c) Notwithstanding any other provisions of state law, and in order to maintain the confidentiality of information and the security of State Bank Department personnel in the performance of their duties, the commissioner shall be authorized to establish travel reimbursement

guidelines for payment of expenses of State Bank Department personnel incurred in the performance of their duties.

(d) If the commissioner is not himself or herself at any time available for the transaction of any specific matter committed by law to his or her authority or discretion, any one of the deputy commissioners, or any other staff member so designated by the commissioner in writing, may transact such matter in the name and stead of the commissioner.

(e)(1) The commissioner, each member of the State Banking Board, the deputy commissioners, chief examiners, counsel, each examiner, each accountant, each attorney, and each other officer, person, or employee, or both, of or for the State Bank Department shall not be personally liable for damages occasioned by his or her official acts or omissions, except when the acts or omissions are corrupt and malicious.

(2) The Attorney General shall defend any action brought against any of the above-mentioned persons by reason of his or her official acts or omissions, regardless of whether at the time of institution of the action the defendant has terminated his or her service with the State Bank Department.

History. Acts 1997, No. 89, § 1; 2019, No. 910, § 582.

Amendments. The 2019 amendment inserted "in consultation with the Secretary of the Department of Commerce" in (a)(1); and substituted "State Bank Department" for "department" throughout (b), (c), and (e).

23-46-207. Interests in financial institutions prohibited.

(a)(1) No employee or officer of the State Bank Department, or employee or officer of the Department of Commerce working within the State Bank Department, who participates in the examination of a financial institution, or who may be called upon to make an official decision or determination affecting the operation of a financial institution, shall be an officer, director, attorney, owner, or holder of stock in any state bank, registered out-of-state bank, or bank holding company which controls a state bank or a registered out-of-state bank, or receive, directly or indirectly, any payment or gratuity from any such organizations.

(2) A person subject to this section may not borrow money from a state bank or registered out-of-state bank which is an out-of-state state-chartered bank except as provided in subsection (b) of this section.

(b) A person subject to this section may:

(1) Be a depositor in any financial institution that the department regulates and participate in such overdraft programs associated with such deposit relationships as the commissioner may, by rule, allow; and

(2) Purchase banking services, other than credit services, under rates and terms generally available to other customers of the financial institution.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 3; 2019, No. 315, § 2525; 2019, No. 910, § 583.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (b)(1).

The 2019 amendment by No. 910 inserted "or employee or officer of the Department of Commerce working within the State Bank Department" in (a)(1).

23-46-208. [Repealed.]

Publisher's Notes. This section, concerning employee bonds, was repealed by Acts 2019, No. 910, § 584, effective July 1, 2019. The section was derived from Acts 1997, No. 89, § 1.

23-46-209. Records and financial reports — Disposition of funds.

(a) The Bank Commissioner shall keep a true and perfect record of all of the business of the State Bank Department and shall make monthly reports to the Auditor of State of all fees he or she collects.

(b) All fees and other revenues received by the department shall be deposited into the State Treasury as special revenues and credited to the Bank Department Fund to be used solely for the payment of the expenses of the department pursuant to the appropriations therefor.

(c) Upon proper voucher from the commissioner, the Auditor of State shall issue the Auditor of State's warrant on the Treasurer of State in payment of all salaries and other expenses incurred in the administration of the Arkansas Banking Code of 1997.

History. Acts 1997, No. 89, § 1; 2007, No. 426, § 3; 2019, No. 910, § 585.

Amendments. The 2019 amendment redesignated (a)(1) as (a), and deleted (a)(2) and (a)(3); and deleted "not necessary for the payments required by subdivision (a)(2) of this section" preceding "shall be deposited" in (b).

23-46-210. Annual and biennial reports of Bank Commissioner.

(a) The Bank Commissioner shall make an annual report to the Secretary of the Department of Commerce of the work and the business of the State Bank Department, which shall embrace a statement of all receipts and expenditures and the name, officers, directors, domicile, capital, surplus, net profits, and deposits of each state bank, in the state, and such other information as the commissioner deems advisable.

(b) The commissioner shall also, biennially, make a detailed estimate of the expenses of the State Bank Department for the two (2) succeeding fiscal years.

History. Acts 1997, No. 89, § 1; 2019, No. 910, § 586.

Amendments. The 2019 amendment substituted "Secretary of the Department of Commerce" for "Governor" in (a); and, in (b), substituted "The commissioner" for "He or she" and "State Bank Department" for "department".

23-46-212. Emergency powers of Bank Commissioner — Legislative findings and intent — Definitions.

(a) The General Assembly:

(1) Finds that in the event of an emergency, the Bank Commissioner should be authorized to take appropriate action to expedite the recovery

of a community affected by the emergency and to encourage banks to meet the credit, deposit, and other financial needs of the community; and

(2) Intends by the enactment of this section to authorize the commissioner when warranted by a state of emergency to assist the affected community by:

(A) Declaring with the consent of the Governor a state of emergency;

(B) Temporarily modifying or suspending banking laws, regulations, or requirements; and

(C) Taking any other action appropriate to assist affected banks so that:

(i) Customary banking services can continue to be provided; and

(ii) Financial stability can be maintained.

(b) As used in this section:

(1) "Affected area" means the geographic location described in a proclamation by the commissioner declaring a state of emergency;

(2) "Affected bank" means a bank with an office in the geographic location described in a proclamation by the commissioner declaring a state of emergency;

(3) "Office" means a physical location where a bank transacts business or conducts banking operations;

(4) "Officer" means:

(A) A person designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank under this section; or

(B) The president or chief executive officer or other person in charge of an office if:

(i) A designation under subdivision (b)(4)(A) of this section has not been made; or

(ii) An officer designated under subdivision (b)(4)(A) of this section is not available; and

(5)(A) "State of emergency" means a natural or man-made occurrence or condition that may:

(i) Affect the ability of a bank to conduct normal business operations; or

(ii) Pose a threat to the safety or security of a person or property.

(B) "State of emergency" includes without limitation an occurrence or condition caused by:

(i) A natural disaster;

(ii) A tornado;

(iii) A storm;

(iv) A flood;

(v) High water;

(vi) An earthquake;

(vii) A drought;

(viii) A fire;

(ix) An act of war, rebellion, violent demonstration, or terrorism;

(x) A robbery of a bank or other financial institution; or

(xi) A cyberattack on, or a cybersecurity breach of, a bank or other depository institution.

(c)(1) In addition to any other law of this state or of the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of a situation or condition beyond the bank's control, the commissioner may with the Governor's consent declare by written proclamation that a state of emergency exists in all or part of the state.

(2) The proclamation and any order issued under this section:

(A) Shall be published on the commissioner's website; and

(B) May be disseminated in any other manner deemed appropriate by the commissioner under the circumstances.

(d)(1) If the commissioner declares a state of emergency under this section, the commissioner may authorize an affected bank by written order to:

(A) Close an office within the affected area; and

(B) Keep the office closed for a reasonable amount of time until the office can be reopened.

(2) A bank that closes an office under this section shall notify the commissioner as promptly as conditions permit by any means reasonably available of the:

(A) Reason for closing the office; and

(B) Expected length of time the office will be closed.

(3) If an office is closed under this section:

(A) Each day that the office is closed shall be treated for banking purposes as a legal holiday; and

(B) An affected bank or a director, officer, or employee of an affected bank shall not because the office is closed:

(i) Incur any liability; or

(ii) Forfeit any legal or equitable rights.

(e)(1)(A) If the commissioner finds that an affected bank closed an office as a result of a state of emergency and that the opening of a temporary office by the affected bank will help meet the credit, deposit, and other financial needs of the customers of the affected area, the commissioner may authorize the affected bank by written order to open a temporary office either within the state or at a location in another state.

(B) The temporary office may be a mobile branch, temporary office space, or any other facility approved by the commissioner.

(2) The formal application process, requirements, and fees for opening a temporary office may be suspended when a state of emergency exists.

(3) A temporary office opened under this section may remain open until the commissioner with the consent of the Governor declares that the state of emergency no longer exists unless written permission to remain open is granted by the commissioner upon application by an affected bank to establish an office at the site of the temporary office.

(f)(1) An order issued by the commissioner under this section becomes effective upon issuance and continues for one hundred twenty (120) days or unless terminated sooner by the commissioner.

(2) The commissioner may extend an order issued under this section for an additional period not to exceed one hundred twenty (120) days if the commissioner with the consent of the Governor finds that the existing state of emergency continues or that a new state of emergency exists.

(g) The commissioner may by rule:

(1) Adopt additional procedures to implement this section; and

(2) Impose sanctions under § 23-46-205 for a violation of this section.

History. Acts 2009, No. 233, § 1; 2017, No. 169, § 1; 2017, No. 198, § 1.

Amendments. The 2017 amendment by No. 169 added (b)(5)(B)(xi).

The 2017 amendment by No. 198 inserted "or chief executive officer" in the introductory language of (b)(4)(B).

Subchapter 3 — State Banking Board

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

23-46-301. Creation — Members — Administration.

(a) There is created a commission which shall be known as the "State Banking Board".

(b)(1) The board shall be composed of six (6) members appointed by the Governor, subject to confirmation by the Senate, for terms of five (5) years or until a successor has been appointed and qualified.

(2)(A) At the time of their appointment, all members of the board shall be, and shall continue thereafter to be, residents of the State of Arkansas.

(B) They shall be age thirty (30) or over.

(3) Board members serving on May 30, 1997, shall continue to serve the remainder of their terms.

(c)(1)(A) For purposes of filling vacancies on the board, members shall be numbered one (1) through six (6), inclusive.

(B)(i) Three (3) members shall be designated banker members, two (2) members shall be designated public members, and one (1) member shall be designated as the representative of the elderly.

(ii) A banker member is a person whose primary occupation is banking. A public member is a person whose primary occupation is outside the field of banking. The representative of the elderly shall be sixty (60) years of age or older and shall not be actively engaged in or retired from the occupation of banking.

(C) One (1) of the banker members shall be designated the State Bank Department member, and the other two (2) shall be designated the Arkansas Bankers Association members. These positions are to be determined by lot.

(2) On the occasion of a vacancy on the board of a department member, a successor shall be selected from among two (2) or more bankers whose names shall be supplied by the Bank Commissioner.

(3) On the occasion of a vacancy on the board of one (1) of the Arkansas Bankers Association banker members, a successor shall be appointed by the Governor after consulting the Arkansas Bankers Association, and the appointment shall be subject to confirmation by the Senate.

(4) The board shall consist of one (1) member from each of the four (4) congressional districts as prescribed in § 7-2-101 et seq., and two (2) members from the state at large, one (1) of whom shall be the representative of the elderly.

(d)(1) No member of the board shall receive, directly or indirectly, any compensation or recompense for his or her services on the board.

(2) Notwithstanding § 25-16-901 et seq., should any member of the board live outside the capital city of the state, he or she may, upon application to the commissioner, be reimbursed out of the income of the office of the commissioner and in the manner provided by law for the actual travel and subsistence expense as may actually have been incurred by him or her in connection with attendance at any meeting of the board.

(e) The office of the commissioner shall be the office of the board.

(f) The board may select as its secretary, a deputy bank commissioner, or a stenographer employed in the office of the commissioner, but no compensation shall be paid to any person whatsoever for services rendered as secretary of the board.

(g)(1) Except as provided in § 23-46-402, the presence at any meeting of at least four (4) members of the board shall be necessary to constitute a quorum, and the concurring votes of not less than a majority of the members present at any meeting shall be necessary to the decision of any question or issue or the authorization of any action.

(2) The representative of the elderly shall be a full voting member.

History. Acts 1997, No. 89, § 1; 2015, No. 1100, § 56.

23-46-303. Study of banking statutes.

The State Banking Board is authorized, at such times as it deems appropriate, to request a review or study of state banking law and to recommend any changes that it may deem appropriate to the Secretary of the Department of Commerce.

History. Acts 1997, No. 89, § 1; 2019, No. 910, § 587.

Amendments. The 2019 amendment substituted "Secretary of the Department of Commerce" for "Governor".

23-46-304. Powers of State Banking Board — Filings with Bank Commissioner.

(a) In addition to all other powers conferred by Arkansas law, the State Banking Board shall have the power and duty to:

(1) Approve or disapprove all applications for charters for new state banks, except applications for new state bank charters in connection with failed institutions as provided in § 23-48-511;

(2) Approve or disapprove all applications for the merger or consolidation of one (1) or more banks, out-of-state banks, or savings and loan associations into a state bank;

(3) Approve or disapprove all applications for the purchase by one (1) state bank of over fifty percent (50%) of the assets of another depository institution, and all applications for the assumption by one (1) state bank of over fifty percent (50%) of the liabilities of another depository institution;

(4) Approve or disapprove all applications by a savings and loan association to convert to a state bank;

(5) Approve or disapprove all applications for amendments to the articles of incorporation of an existing state bank;

(6) Approve or disapprove all applications for the relocation of a state bank's main office from one (1) municipality to another;

(7) Approve or disapprove all rules promulgated by the Bank Commissioner;

(8) Authorize a state bank under circumstances in which it is not given authority under state law to participate in any public agency hereinafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to banks or trust companies, and to authorize compliance with all requirements and conditions imposed upon the participants;

(9) Subpoena witnesses; and

(10) Require such clerical and technical assistance as is necessary or appropriate to carry out its duties.

(b) Upon the submission to it by the commissioner of each application, the board shall review the results of the commissioner's investigation and make further investigation, if any, that it may deem

appropriate to enable it to determine the fitness of the applicants, the need from the public standpoint for the granting of the application, and all other questions, whether or not of like kind with those referred to in this section, which bear directly or indirectly upon the need or desirability from the public standpoint for the granting of the application.

(c)(1) Filing with the commissioner of any application or document required by the Arkansas Banking Code of 1997 or by State Bank Department rules shall be public notice of the matters contained in that application or document.

(2) The commissioner shall maintain the applications or documents in his or her custody.

(3) Upon request, the commissioner shall provide verification of the filing and reasonable access to inspection by the public.

(4) Nothing in this section shall be construed to modify the prohibitions upon the disclosure of confidential information contained in § 23-46-101 or the commissioner's authority to issue rules concerning the disclosure of confidential information.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 4; 2019, No. 315, § 2526.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (c)(1) and (c)(4).

Subchapter 4 — Proceedings Before State Banking Board and Bank Commissioner

23-46-402. Meetings of board — Notice.

(a)(1) The Chair of the State Banking Board or the Bank Commissioner may call a special meeting of the board upon notice through a personal communication with each member of the board by telephone or through a written notice transmitted by ordinary, certified, or registered mail, personal delivery, overnight delivery, or telefacsimile directed to each member of the board at his or her business or residence address as shown on the records of the board.

(2) The records of the State Bank Department shall affirmatively reflect the time and manner in which the meeting was called and notice thereof given.

(b) The board members may waive any notice of a special meeting by signing a written consent to the holding of the meeting or by appearing at the meeting and participating therein.

(c) In the instances in which notice of a special meeting is not waived by the board members, the notice shall be given to the board members at least fourteen (14) days before the meeting.

(d)(1) If at any time it is impossible for the commissioner or the chair to give notice of a meeting to board members because of the death, disability, or absence from the state of the members, a meeting of the board may be called by notice given to the members who are available.

(2) In this event, the unanimous action of three (3) of the members who were so served with notice shall be the action of the board.

(3) This rule shall also be applicable in situations in which, under subsection (g) of this section, the board is permitted to act informally without a fixed meeting.

(e) The board may also hold regular meetings on dates fixed in its procedures, policies, and rules.

(f)(1) The board may permit any or all of its members to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting.

(2) A member participating in a meeting by this means is deemed to be present in person at the meeting.

(g)(1) Matters other than applications described in § 23-46-403 requiring the board's consideration and which are not contested may, in the commissioner's discretion, be considered by the board through mailing or delivering of all necessary documents and correspondence to all board members, no formal meeting being necessary.

(2) Applications submitted to the board according to this procedure must be filed with the commissioner for at least three (3) days prior to submission to the board with no protest's having been filed.

(3) Where the application is thus submitted, the written approval or disapproval endorsed upon the application, or a copy thereof, and transmitted to the commissioner by at least four (4) members of the board shall represent the action of the board.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2527.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (e).

23-46-403. Applications.

When any of the following applications are filed with the Bank Commissioner, the sponsors of the applications shall give notice of filing in accordance with State Bank Department rules:

(1) An application for the issuance of a new state bank charter;

(2) An application for the merger or consolidation of one (1) or more banks into a state bank;

(3) An application for the merger or consolidation of one (1) or more savings and loan associations into a state bank;

(4) An application for the purchase by one (1) state bank of greater than fifty percent (50%) of the assets of another depository institution or an application for the assumption by one (1) state bank of greater than fifty percent (50%) of the liabilities of another depository institution; or

(5) An application for the change of a state bank's place of business from one municipality to another.

History. Acts 1997, No. 89, § 1; 1999, No. 113, § 2; 2001, No. 63, § 1; 2019, No. 315, § 2528.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the introductory language.

23-46-404. Applications fees — Bank Commissioner's rules.

(a) The State Banking Board shall have the power to set and impose fees for any and all applications, regardless of whether the applications are of a type described in § 23-46-403, which are reasonably calculated to defray the costs associated with the consideration, investigation, and processing of those applications.

(b)(1) The Bank Commissioner may issue rules specifying the circumstances under which any application must be filed and the procedural and substantive requirements governing the filing of any and all applications of whatever type.

(2) The commissioner may also issue rules requiring the submission of applications that are not described in the Arkansas Banking Code of 1997.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2529.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the section heading; and deleted "and regulations" following "rules" in (b)(1) and (b)(2).

23-46-406. Hearing.

(a)(1) No person shall appear in opposition to the application unless the person has filed a written protest to the application within fifteen (15) days after the actual filing of the application.

(2) The protest must be accompanied by a filing fee of not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000) for each protestant, such amount to be set by State Bank Department rule.

(b) At the hearing all persons sponsoring the application and any person making a timely written protest against the application may appear. The attorneys for any such person may appear and be heard.

(c) The Bank Commissioner will participate with the State Banking Board in the hearing.

(d) The board or the commissioner may subpoena witnesses on their own motion or on the request of any party to the proceedings.

(e)(1) The admission of evidence at the hearing shall be controlled by § 25-15-213. The parties shall have the right to cross-examine witnesses.

(2) Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the board's specialized knowledge.

(3) The parties may bind themselves by stipulation.

(f) The applicant shall be responsible for procuring and paying for a verbatim record of the proceeding. It will be the duty of the applicant to

furnish at least one (1) copy of the transcript to the commissioner free of charge.

History. Acts 1997, No. 89, § 1; 1999, No. 113, § 4; 2019, No. 315, § 2530.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a)(2).

Subchapter 5 — Reports and Examinations

Effective Dates. Acts 2017, No. 507, § 2: Mar. 15, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that to enhance economic development, the Bank Commissioner needs to examine financial entities in Arkansas; and that this act is immediately necessary because of the need to take advantage of any opportunities that may be encouraged by the enhanced economic development created as a result of the examinations. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-46-502. Statement on call.

(a) Every state bank and subsidiary trust company operating under the supervision of the Bank Commissioner shall make to the commissioner, whenever required by him or her, a statement of its assets and liabilities as shown by its records at the close of business on the day designated, which day shall be prior to the call of the commissioner.

(b) The commissioner shall not give notice to any person whomsoever of the date on which he or she will call for the statement.

(c) The reports shall be verified by the institution's president or chief executive officer or a vice president and shall be attested by at least two (2) directors.

(d)(1) The reports required by this section shall embrace the amount of paid-up capital, surplus, net undivided profits, deposits, and all other liabilities of whatsoever character.

(2)(A) It shall also state the amount loaned upon real estate, notes, bills of exchange, overdrafts, bonds, and other securities, stating the actual market value of the bonds or securities, the amount invested in real estate for banking premises, other real estate owned, when and how acquired, and the actual cost, cash on hand and on deposit in other banks, subject to check, with the amount and character of all

other assets, together with such other information as the commissioner may require.

(B) Any commercial or other unsecured paper past due twelve (12) months on which the interest is unpaid and not in process of collection shall not be included as an asset in the report.

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 2.

Amendments. The 2017 amendment substituted "or chief executive officer or a vice president and shall be attested by at least two (2) directors" for "or a vice president, and in addition thereto, shall be attested by not fewer than two (2) directors" in (c).

23-46-503. When examinations made.

(a) The Bank Commissioner shall, as often as may be deemed necessary or proper, appoint suitable persons to make an examination of each state bank or subsidiary trust company.

(b)(1) A thorough examination into the affairs of each state bank or subsidiary trust company shall be made at least once every twenty-four-month period. Provided, however, the twenty-four-month period may be extended to a thirty-six-month period if an interim thorough examination is performed by the state bank's or subsidiary trust company's primary federal regulatory authority.

(2) The commissioner may authorize examinations at more frequent intervals if he or she shall deem it proper.

(c)(1) The commissioner shall direct the State Bank Department to make an annual examination into the affairs of nonprofit corporations that have registered with the commissioner to be a regulated economic development enterprise under this subsection and that registration has been approved by the State Banking Board.

(2) A nonprofit corporation electing to be a regulated economic development enterprise shall certify in its registration to the commissioner that the nonprofit corporation:

(A) Was previously registered under the Arkansas Development Finance Corporation Act, § 15-4-901 et seq. [repealed];

(B) Is a domestic nonprofit corporation with a total equity of the nonprofit corporation and any subsidiaries exceeding five million dollars ($5,000,000);

(C) Provides financing for the promotion, development, and conduct of Arkansas business;

(D) Together with any of its subsidiaries, has loan receivables that exceed fifteen million dollars ($15,000,000); and

(E) Shall provide reasonable cooperation and assistance to the department during an examination.

(3)(A) A regulated economic development enterprise registered under this subsection shall pay to the department, within ten (10) days after notice from the commissioner in the months of January and July of each year, an assessment fee in accordance with an assessment fee schedule approved by the commissioner.

(B) The commissioner, with the approval of the board, shall also have the authority to establish a schedule of fees to be charged by the department relative to registrations which are reviewed by the department, as well as a schedule of other fees to be charged for service performed by the department.

(C) The assessments may be increased if not sufficient in connection with other fees received as mentioned in this section to defray the expenses of the department.

(4)(A) The commissioner shall be charged with the general supervision of regulated economic development enterprises, with the power to issue cease-and-desist orders against any regulated economic development enterprise, or an officer, director, or employee of a regulated economic development enterprise, found to be violating state or federal law, rules, or regulations of a federal regulatory agency, violating any regulatory agreement, or jeopardizing the safety and soundness of the regulated economic development enterprise.

(B) The commissioner has grounds for and may issue a cease-and-desist order for the permanent or temporary removal of an officer, director, employee, agent, or any other person participating in the affairs of or otherwise connected with a regulated economic development enterprise, or any affiliate thereof, if he or she is found by the commissioner to be or to have been:

(i) Violating state or federal law, rules and regulations of a federal regulatory agency, or department rules;

(ii) Acting incompetently, recklessly, or dishonestly;

(iii) Indicted of a crime involving moral turpitude; or

(iv) Otherwise impairing the safety and soundness of the regulated economic development enterprise.

(C)(i) A person who is subject to a cease-and-desist order issued by the commissioner who refuses or fails to comply with the terms of the order may be assessed a monetary penalty for the failure to comply with the cease-and-desist order after a ten-day notice given by the commissioner to the regulated economic development enterprise or person who is subject to the order.

(ii) The amount of the monetary penalty shall not exceed one thousand dollars ($1,000) per day of the violation against each regulated economic development enterprise and each officer, director, or employee contributing to the regulated economic development enterprise's or the person's failure to comply with the cease-and-desist order.

(iii) Subject to the limitation described in subdivision (c)(4)(C)(ii) of this section, the amount of the monetary penalty shall be determined by the commissioner.

(D) The commissioner may revoke a nonprofit corporation's status as a regulated economic development enterprise under this subsection if the commissioner determines, after examination and investigation, that the regulated economic development enterprise:

(i) Is or has been violating state or federal law;

(ii) Is violating the rules and regulations of a federal regulatory agency;

(iii) Fails to meet the minimum equity requirements under subdivision (c)(2) of this section; or

(iv) Is operating or has been operated in a manner that jeopardizes the safety and soundness of the regulated economic development enterprise.

(E)(i) The commissioner shall have the power to issue such rules as may be necessary or appropriate with the approval and consent of the board.

(ii) This section shall not be construed to curtail the commissioner's power to issue emergency rules with the approval and consent of the board.

(F) In addition to other powers under this section, the commissioner shall have the power and authority to:

(i) Inspect and copy all books, records, and other information relating to a regulated economic development enterprise; and

(ii) Subpoena witnesses, compel their attendance, require production of evidence, and administer oaths.

(G)(i) A person or regulated economic development enterprise aggrieved and directly affected by an order of the commissioner issued under this subsection is entitled to judicial review.

(ii) A person or regulated economic development enterprise may seek judicial review by petition to a circuit court of competent jurisdiction.

(iii) The petition shall be filed within thirty (30) days from the date of issuance of the order.

(iv) If a petition is not filed within thirty (30) days from the date of issuance of the order, the order shall not be appealed and is permanently binding upon the person until terminated by the commissioner.

(5) A nonprofit corporation that is registered as a regulated economic development enterprise, that is in compliance with federal and state laws, rules, and regulations, and that does not have any regulatory proceeding pending against it may withdraw its registration as a regulated economic development enterprise.

History. Acts 1997, No. 89, § 1; 2017, No. 507, § 1; 2019, No. 315, § 2531.

Amendments. The 2017 amendment added (c).

The 2019 amendment substituted "rules" for "regulations" in (c)(4)(B)(i).

23-46-505. Noncompliance with banking law — Special examinations.

Whenever it shall come to the knowledge of the Bank Commissioner that any state bank or subsidiary trust company has failed or refused to comply with any of the provisions of the Arkansas Banking Code of

1997, with any provision of federal law or federal regulations applicable to financial institutions, with any State Bank Department rules, or with any direction of the commissioner made specifically to that state bank or subsidiary trust company as a result of an examination into its affairs, he or she is authorized, as a penalty for that failure or refusal, to make a special examination of the state bank or subsidiary trust company, to charge and collect the same fees therefor as for a regular examination, and to continue such examinations and charges at intervals of thirty (30) days or less until such provisions, regulations, rules, and directions are complied with.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2532.

Amendments. The 2019 amendment substituted "State Bank Department rules" for "department regulations", and inserted the second occurrence of "rules".

23-46-511. Retention of records.

(a) Every state bank or subsidiary trust company shall retain its business records for periods that are or may be prescribed by or in accordance with the terms of this section.

(b) Each state bank or subsidiary trust company shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, and all records which the Bank Commissioner and the State Banking Board shall, in accordance with the terms of this section, require to be retained permanently.

(c) All records other than those described in subsection (b) of this section shall be retained for periods that the commissioner and board, in accordance with the terms of this section, shall prescribe.

(d) The commissioner shall issue rules, with the approval of the board, prescribing the period for which records must be maintained. The periods may be permanent or for a term of years.

(e) Any state bank or subsidiary trust company may dispose of any records which have been retained for the period prescribed in accordance with the terms of this section and shall, after it has disposed of a record, thereafter be under no duty to produce the record in any action or proceeding.

(f)(1) In lieu of retention of the original records, any state bank or subsidiary trust company may cause any or all of its records, and records held at any time in its custody, including those held by it as a fiduciary, to be photographed or otherwise reproduced in permanent form.

(2) Any photograph or other reproduction shall have the same force and effect as the original thereof and be admitted into evidence equally as with the original.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2534.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (d).

Subchapter 6 — Examination of Technology Service Providers Act

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Effective Dates. Acts 2017, No. 646, § 2: Mar. 24, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the connections between banks and technology service providers create unknown risks to the financial system as banks are increasingly reliant on third parties to provide everyday services or enable access to key banking functions; that because of the vital role technology service providers play in the safety and soundness of banks and the stability of the financial system, it is imperative for bank supervisory agencies to examine technology service providers because a significant disruption affecting a single technology service provider could have an adverse impact on a large number of banks; and that this act is immediately necessary because it provides the requisite legal authority for bank supervisory agencies to examine technology service providers that provide covered services to banks. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-46-601. Title.

This subchapter shall be known and may be cited as the "Examination of Technology Service Providers Act".

History. Acts 2017, No. 646, § 1.

23-46-602. Definitions.

As used in this subchapter:

(1) "Bank supervisory agency" means the same as defined in § 23-45-102;

(2)(A) "Covered service" means a service provided by a technology service provider to a depository institution in this state to the extent that the service is designed and marketed specifically for use by depository institutions to provide financial services to their customers.

(B) "Covered service" includes:

(i) Data processing services;

(ii) Activities that support financial services, including without limitation lending, funds transfer, fiduciary activities, trading activities, and deposit-taking;

(iii) Internet-related services, including without limitation web services, electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring; and

(iv) Activities related to the business of banking;

(3) "Depository institution" means an entity or financial institution as defined in § 23-45-102(a)(19) or § 23-45-102(a)(21), including any subsidiary or affiliate of the depository institution that is subject to examination by the Bank Commissioner;

(4) "Internet service provider" means any provider that provides a subscriber with access to the internet; and

(5)(A) "Technology service provider" means a person, company, corporation, or other legal entity that provides a covered service.

(B) "Technology service provider" does not mean:

(i) An internet service provider or a general audience internet platform;

(ii) A person, company, corporation, or other legal entity licensed under the Uniform Money Services Act, § 23-55-101 et seq.; or

(iii) An authorized delegate of a licensee under the Uniform Money Services Act, § 23-55-101 et seq.

History. Acts 2017, No. 646, § 1.

23-46-603. Technology service providers subject to examination by Bank Commissioner.

When a depository institution receives a covered service, by contract or otherwise, the performance of that service by a technology service provider to the depository institution is subject to examination by the Bank Commissioner to the same extent as if the covered service were performed by the depository institution itself.

History. Acts 2017, No. 646, § 1.

23-46-604. Authorization for agreements with bank supervisory agencies regarding use of examiners.

The Bank Commissioner may enter into agreements with any bank supervisory agency that has jurisdiction over a technology service provider to:

(1) Engage the services of the bank supervisory agency's examiners at a reasonable rate of compensation; or

(2) Provide the services of the State Bank Department's examiners to the bank supervisory agency at a reasonable rate of compensation.

History. Acts 2017, No. 646, § 1.

23-46-605. Authorization for joint examinations or joint enforcement actions with bank supervisory agencies.

The Bank Commissioner may enter into joint examinations or joint enforcement actions with a bank supervisory agency having jurisdiction over a technology service provider.

History. Acts 2017, No. 646, § 1.

23-46-606. Acceptance of examinations from bank supervisory agency.

The Bank Commissioner may accept an examination that is conducted by a bank supervisory agency that has jurisdiction over a technology service provider as a substitution for an examination under this subchapter.

History. Acts 2017, No. 646, § 1.

23-46-607. Enforcement — Rules.

The Bank Commissioner may by rule:

(1) Adopt additional procedures to implement this subchapter; and

(2) Impose sanctions under § 23-46-205 for violations of this subchapter by a technology service provider if the commissioner considers the enforcement action to be necessary or appropriate to enforce this subchapter and ensure compliance with the laws of this state.

History. Acts 2017, No. 646, § 1.

CHAPTER 47

BANK POWERS — SUBSIDIARIES

SUBCHAPTER.

Subchapter 1 — Powers Generally

SECTION.

Effective Dates. Acts 2017, No. 548, § 11: Mar. 21, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Ar-

kansas that the efficient operation of state banks and bank holding companies doing business in Arkansas is a critical need for Arkansas and the banking and financial institutions industry operating under state law; that the Arkansas Banking Code of 1997 does not currently allow a state bank in Arkansas to pursue efficient operations and regulatory cost savings under state law through a merger transaction with a wholly owned subsidiary bank of an Arkansas bank holding company that results in the subsidiary bank as the surviving entity of the merger transaction; and that this act is immediately necessary because it is critical that the provisions of this act become effective as soon as possible to encourage efficiency and regulatory costs savings to banks and financial institutions operating in Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-47-101. Powers of state banks generally.

(a) Subject to any State Bank Department rule and consistent with any restrictions imposed by the Arkansas Banking Code of 1997, each state bank shall, unless it shall be determined to be unsafe and unsound by the Bank Commissioner, and without specific mention thereof in its articles of incorporation, have the following powers and be permitted, in addition to other powers conferred upon it by other provisions of law:

(1) To receive by any means money for deposit and to provide by its rules or by agreement for the terms of withdrawal and payment of interest thereon pursuant to the provisions of § 23-47-201 et seq.;

(2) To receive by any means money for transmission to another person and to transmit money by any means to another person;

(3) To buy, sell, and exchange coin and bullion;

(4) To buy, sell, and exchange bonds and certificates of indebtedness issued or guaranteed by the United States, its agencies and instrumentalities thereof, the State of Arkansas or of any other state, or of any city, county, school district, or other municipal corporation, improvement district, public facilities board, or other agencies or instrumentalities of such state or states;

(5) To purchase and sell securities, other than bonds and certificates of indebtedness described in subdivision (a)(4) of this section, and stock without recourse, solely upon the order and for the account of customers and other persons, and in no case for its own account;

(6) To purchase, sell, and exchange for its own account securities pursuant to the provisions of § 23-47-401;

(7) To lend money, either without security or upon the security that the bank may require, pursuant to the provisions of § 23-47-501 et seq.;

(8) To issue capital notes, with or without conversion features, with the prior written approval of the commissioner, and to otherwise become indebted to other persons through other types of obligations, including purchase money obligations, leases, Federal Home Loan

Bank and Federal Reserve Bank advances, federal funds transactions, and securities repurchase agreements, all without limitations on interest rates and term;

(9) To have such amounts of authorized but unissued stock as it may deem appropriate;

(10) To purchase insurance, including key-man insurance, and to establish employee and director benefit plans including, without limitation, stock options and stock purchase and compensation plans;

(11) To own and lease personal property acquired upon the specific request and for the use of a customer and to incur obligations incident thereto, the lease obligation to be subject to borrower loan limits and to a schedule of periodic regular rental payments that shall be consistent with a timely recovery by the bank of its cost for the leased property;

(12) To make contributions to or for the benefit of the following:

(A) The United States, any state, territory, or political subdivision thereof, the District of Columbia, or any possession of the United States, for exclusively public purposes;

(B) A corporation, foundation, trust, community chest, or other organization created or organized in the United States, or any state or territory, or the District of Columbia, or any possession of the United States, exclusively for religious, charitable, scientific, veteran rehabilitation service, civic enterprise, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; or

(C) Other lawful expenditures, contributions, and donations, to the extent authorized, approved, or ratified by action of the board of directors of the bank, except as otherwise specifically provided or limited by its articles of incorporation, its bylaws, or by resolution adopted by its stockholders;

(13) To service loans made by it or by others, whether or not held by the bank;

(14) To warehouse or act as agent in warehousing mortgages and other loans;

(15) With the prior approval of the commissioner and subject to such conditions as may be prescribed by the commissioner, to provide messenger service between the bank and its customers;

(16) To engage in any activities which are a part of the business of banking or incidental thereto by means of an operating subsidiary pursuant to the provisions of § 23-47-601;

(17) To invest in bank service companies pursuant to the provisions of § 23-47-603;

(18) [Repealed.]

(19) To invest in a community development company pursuant to the provisions of § 23-47-605;

(20) To invest in small business investment companies and minority enterprise small business investment companies as defined by the

Arkansas Development Finance Authority Small Business Act of 1989, § 15-5-701 et seq., pursuant to the provisions of § 23-47-606;

(21) To invest in corporations organized under the Edge Act, pursuant to the provisions of § 23-47-607;

(22) To operate a travel agency;

(23) To engage in leasing real property;

(24) To act as escrow agent and closing agent;

(25) To act as a fiscal or transfer agent, assignee, receiver, and depository;

(26) To act as an executor, administrator, trustee, or other fiduciary pursuant to the provisions of § 23-47-701 et seq.;

(27) To guaranty signatures;

(28) To provide third-party payment services;

(29) To issue, advise, and confirm letters of credit;

(30) To act as an agent to collect checks, drafts, and other items of commercial paper, to become a member of a clearing house, and to grant security interests in its assets for its qualification therein;

(31) To receive property as custodian for safekeeping;

(32) To lease safe-deposit boxes pursuant to the provisions of § 23-47-901 et seq.;

(33) To enter into agreements to provide for losses arising from the cancellation of outstanding loans upon the death of borrowers;

(34) Through a separate subsidiary, to act as agent in the sale of title insurance and perform title searches and other abstractor services;

(35) To invest in clearing corporations and banker's banks;

(36) To invest in bank premises real estate pursuant to the provisions of § 23-47-103; and

(37) To acquire, develop, and dispose of real estate through foreclosure or in lieu of foreclosure of debts previously contracted in the ordinary course of its banking business, including single-family lots and single-family residences consisting of one (1) through four (4) family units.

(b) In addition to the foregoing, a state bank may exercise any other powers which are incidental to the business of banking.

(c) In addition to the powers conferred upon state banks under this or any other law of this state, upon action of the commissioner authorizing state banks to undertake such activities, a state bank may engage in any banking activities in which state banks could engage were they acting as national banks at the time such authority is granted.

(d)(1) If a state bank or bank holding company is located in a town with a population of fewer than two thousand five hundred (2,500) people according to the latest federal decennial census, the bank or bank holding company may acquire, purchase, or construct a dwelling for use as the residence of the bank's or bank holding company's chief executive officer as part of his or her compensation.

(2) The expenditure for the dwelling shall not exceed one hundred thousand dollars ($100,000).

History. Acts 1997, No. 89, § 1; 2003, No. 860, § 14; 2017, No. 426, § 13; 2019, No. 315, § 2535.

Amendments. The 2017 amendment repealed (a)(18).

The 2019 amendment substituted "rule" for "regulations" in the introductory language of (a).

23-47-102. Acquisition and disposition of own stock.

(a) No state bank shall be the purchaser or holder of its own capital stock, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith.

(b) Stock so purchased or acquired shall be sold or disposed of as expeditiously as possible within twenty-four (24) months of its purchase or acquisition. After the expiration of twenty-four (24) months, any such stock shall not be considered as part of the assets of the state bank.

(c) This section does not apply to:

(1) The payment by a state bank of the value of shares held by shareholders dissenting from any proposed merger, consolidation, purchase or assumption, or other reorganization involving a plan of exchange of any of the stock of the state bank, who perfect their statutory rights as dissenting shareholders; or

(2) The repurchase by a state bank of its shares of capital stock if the state bank is required to file reports under section 13 or section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017, or has a class of equity securities registered under section 12(b) or section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017, when the terms of the repurchase, or any repurchase plan or program, has been approved by the Bank Commissioner.

History. Acts 1997, No. 89, § 1; 2017, No. 548, § 1.

Amendments. The 2017 amendment redesignated former (c) as the present introductory language of (c) and (c)(1); substituted "This section does not apply" for "The provisions of this section shall not apply" in the introductory language of (c); and added (c)(2).

U.S. Code. Sections 12, 13, and 15 of the Securities Exchange Act of 1934, referred to in this section, are codified as 15 U.S.C. § 78l, 15 U.S.C. § 78m, and 15 U.S.C. § 78o, respectively.

Subchapter 2 — Deposits

Effective Dates. Acts 2015, No. 586, § 5: June 1, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that an account holder of a deposit account may only designate a natural person as a beneficiary under a payable on death designation; that many bank customers in this state desire to designate a beneficiary who is not a natural person

and would have the ability to do so if the limitation was removed; and that this act is necessary because it allows an account holder of a deposit account to designate a trust or an entity and not limited to a natural person as a beneficiary. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on June 1, 2015."

23-47-204. Deposit accounts — Definitions.

(a)(1) As used in this section:

(A) "Multiple-party deposit account" means a deposit account established in the names of two (2) or more persons and payable to or in a form subject to withdrawal by one (1) or more of the persons named on the deposit account; and

(B) "Single-party deposit account" means a deposit account established in the name of one (1) person and payable to or in a form subject to withdrawal by the person named on the deposit account.

(2) A deposit account may be established as a single-party deposit account or a multiple-party deposit account.

(b)(1) When opening a multiple-party deposit account or amending an existing deposit account so as to create a multiple-party deposit account, a bank shall utilize account documents which enable the depositor to designate ownership interest therein in terms substantially similar to one (1) or more of the following:

(A) Joint tenants with right of survivorship;

(B) Tenants in common;

(C) Tenants by the entirety;

(D) Payable on death;

(E) "Totten" or tentative trust; and

(F) Such other deposit designation as may be acceptable to the bank.

(2) Account documents which enable the depositor to indicate the depositor's intent of the ownership interest in any multiple-party deposit account may include any of the following:

(A) The signature card;

(B) The deposit agreement;

(C) A certificate of deposit;

(D) A document confirming purchase of a certificate of deposit; or

(E) Such other document acceptable to the bank which indicates the intent of the depositor.

(3) The designation of ownership interest contained in account documents shall be conclusive evidence in any action or proceeding involving the deposit account of the intention of all depositors to vest title to the deposit account in the manner specified in the account documents.

(4) Nothing in this section shall be construed to require a bank to offer any particular type of multiple-party deposit account.

(c) Multiple-party deposit accounts which do not expressly designate ownership interest as tenants in common, payable on death, or "Totten" or tentative trust shall constitute:

(1) A joint tenant with right of survivorship deposit account, if the depositors have not indicated in the account documents that the depositors are married to each other; and

(2) A tenants by the entirety deposit account, if the depositors have indicated in the account documents that they are married to each other, whether or not they are at that time husband and wife.

(d)(1) A joint tenant with right of survivorship deposit account may be paid to or on the order of any one (1) of the depositors during his or her lifetime unless a contrary written designation, in a form acceptable to the bank, is given to the bank, or to or on the order of any one (1) of the survivors of them after the death of any one (1) or more of them.

(2) A tenants by the entirety deposit account may be paid to or on the order of either depositor during his or her lifetime, or to or on the order of the survivor after the death of one (1) of them.

(3)(A) A tenants in common deposit account may be paid, prior to the receipt by the bank of a specific written notice of death of a depositor, to or on the order of any one (1) depositor unless a contrary written designation in a form acceptable to the bank is given to the bank.

(B) Upon receipt of a specific written notice of death of a depositor in a form acceptable to the bank, the respective pro rata parts of a tenants in common deposit account may be paid to or on the order of the surviving tenant in common, and to the estate of the deceased depositor.

(C) All tenants in common deposit accounts shall be deemed to be owned pro rata by the depositors unless a contrary written designation in a form acceptable to the bank is given to the bank.

(e)(1)(A) A deposit account may have a payable on death designation.

(B) A payable on death deposit account is created if the depositor indicates on the account documents that:

(i) The deposit account is payable to one (1) or more living account holders during the life of the account holders; and

(ii) Upon the death of the person or persons to whom the deposit account is payable under subdivision (e)(1)(B)(i) of this section, the deposit account shall be paid to or held by another person or persons, as defined in § 23-45-102.

(2)(A) Upon the death of the person or persons to whom the deposit account is payable under subdivision (e)(1)(B)(i) of this section, the owner of the deposit account shall be the person or persons designated by the depositor as a beneficiary on the account documents and that beneficiary is a person, as defined in § 23-45-102.

(B)(i) If more than one (1) person becomes an owner of the deposit account under subdivision (e)(2)(A) of this section, ownership of the deposit account shall be as joint tenants with right of survivorship.

(ii) If a designated beneficiary does not survive or is not a person as defined in § 23-45-102, the proceeds remaining on deposit in the deposit account belong to the estate of the last surviving account holder.

(3) During the lifetime of the depositor, he or she may change the designation of the beneficiary who shall be the owner at his or her death by written direction in a form acceptable to the bank.

(4) The State Bank Department shall promulgate rules that set out procedures a bank may take before transferring ownership of a deposit account, closing a deposit account, and distributing the proceeds to a person designated by the account documents as a beneficiary.

(f)(1) A "Totten" or tentative trust deposit account is created when the depositor indicates on the account document that he or she is the trustee for another person and there is no written trust agreement which affects the deposit account.

(2) Upon the death of the person named as trustee, the other person shall be the owner of the deposit account and, if more than one (1) person shall be the owners of the deposit account, ownership shall be as joint tenants with right of survivorship.

(3) During the lifetime of the person named as trustee, he or she may change the classification of the person he or she is trustee for by written direction in a form acceptable to the bank.

(g) A bank shall also pay partial withdrawal requests, accept pledges of a deposit account, and otherwise deal with the deposit account in the same manner it pays the deposit account pursuant to the provisions of this section.

(h)(1) Any payment of a deposit account, acceptance of pledge of a deposit account, change in the form of a deposit account, or otherwise dealing with a deposit account by a bank in the manner provided by this section shall be a complete and valid release and discharge of the bank as to the amount paid or action taken.

(2) No bank shall have any liability whatsoever for the way in which the ownership interest of a deposit account is designated when it is opened or in which a deposit account is amended if the deposit account is opened or amended as the depositor specified in the account document.

(i) No bank making any payment in accordance with the provisions of this section shall thereby be liable for any estate, inheritance, or succession taxes which may be due.

(j) The terms "written direction" and "written designation" shall not be construed to require that the depositor affix his or her signature to an instrument unless the bank requires the signature of the depositor to the instrument.

(k) This section applies to a deposit account established on or after June 1, 2015.

History. Acts 1997, No. 89, § 1; 2015, No. 586, §§ 1-4.

CASE NOTES

No Setoff Awarded.

Trial court did not err in not awarding a setoff of $11,000 claimed to belong to the decedent that the companion spent solely for her benefit; the decedent's heirs did not argue that the account was not a joint account co-owned by the decedent and companion, generally funds deposited into a joint account were owned by both parties, and the decedent had testified that he deposited the check, and this was a matter of credibility and clear error was not shown. Campbell v. Graf, 2014 Ark. App. 98, 432 S.W.3d 96 (2014).

23-47-208. Deferred income investment accounts.

(a) On behalf of depositors, state banks may create and open deferred income investment accounts of the following types:

(1) The depositor makes a deposit of a lump sum, and the bank agrees to pay the depositor an agreed monthly or annual payment for life or for a term certain beginning immediately or at some time in the future; and

(2) The depositor makes a deposit periodically on an agreed basis, and the bank agrees to pay the depositor, on a periodic basis beginning at some time in the future for life or a term certain, an agreed monthly or annual payment.

(b) The depositor and the state bank may agree that:

(1) A partial refund of the deposit may occur upon specified events, or no refund may occur;

(2) The depositor may elect to stop payments from the bank for a term;

(3) The payments may go to designated beneficiaries in all cases both before and after death of the depositor;

(4) The amount of the payments to the bank and to the depositor will be fixed for the term agreed upon; or

(5) The payment to the depositor will be determined by an index or criteria beyond the control of the depositor or bank.

(c) The Bank Commissioner shall promulgate such rules as may be necessary and proper to carry out the intent and purpose of this section and to issue cease and desist orders to any state bank found to be violating this section or State Bank Department rules. These department rules shall incorporate §§ 23-81-121 — 23-81-128, where applicable.

(d) The deferred income investment accounts allowed in this section shall be exempt from §§ 23-42-501 and 23-42-502.

(e) It is the intent of this section that distributions from deferred income investment accounts be treated as nontaxable to the greatest extent possible under section 72 of the Internal Revenue Code of 1986.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2536.

Amendments. The 2019 amendment, in (c), deleted "and regulations" following the first occurrence of "rules", and substituted the second and third occurrences of "rules" for "regulations".

23-47-209. Savings promotion raffle — Definitions.

(a) As used in this section:

(1)(A) "Financial institution" means a banking institution that may accept deposits from depositors under any state or federal law, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and is a state or federally regulated institution.

(B) "Financial institution" includes without limitation:

(i) A state bank regulated by the State Bank Department or similar state regulator in the domicile of the state bank;

(ii) A national bank or association;

(iii) A state or federal savings and loan association;

(iv) A mutual savings bank;

(v) A state or federal credit union; and

(vi) A community or rural development bank;

(2) "Savings promotion deposit" means the specified amount of moneys required by a depositor to be deposited into a savings account to be entered in a savings promotion raffle; and

(3) "Savings promotion raffle" means a raffle conducted by a financial institution in which the sole consideration required for a chance of winning designated prizes is the deposit of at least a specified amount of moneys into a savings account or other savings program offered by the financial institution.

(b) A financial institution may conduct a savings promotion raffle for depositors who make a savings promotion deposit into a savings account of the financial institution.

(c) A savings promotion raffle shall be conducted so that each savings promotion deposit provides a depositor with an equal chance of winning a prize as designated by the financial institution.

History. Acts 2015, No. 589, § 2.

A.C.R.C. Notes. Acts 2015, No. 589, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Savings Promotion Act'."

Subchapter 4 — Investments

SECTION.

23-47-401. Investment powers and limitations.

(a) A state bank may invest its funds without limitation in the following:

(1) Direct obligations of the United States Government;

(2) Obligations of agencies and instrumentalities created by act of Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government;

(3) Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of Congress and authorized thereby to issue such a guarantee;

(4) Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of Congress and authorized thereby to issue such commitments or agreements;

(5) General obligations of the states of the United States and of the political subdivisions, municipalities, commonwealths, territories, or insular possessions thereof;

(6) Obligations issued by the State Board of Education under authority of the Arkansas Constitution or applicable statutes;

(7) Warrants of political subdivisions of the State of Arkansas and municipalities thereof having maturities not exceeding one (1) year;

(8) Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;

(9) The sale of federal funds with a maturity of not more than one (1) business day;

(10) Demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia, provided funds invested in such demand, savings, or time deposits or accounts are fully insured by a federal deposit insurance agency;

(11) Repurchase agreements that are fully collateralized by direct obligations of the United States Government, and general obligations of any state of the United States or any political subdivision thereof, provided that the repurchase agreement shall provide for the taking of delivery of the collateral, either directly or through an authorized custodian; and

(12) Securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a "money market fund" under 17 C.F.R. § 270.2a-7, provided that the portfolio of the investment company or investment trust is limited principally to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that the investment company or investment trust shall take delivery of the collateral either directly or through an authorized custodian.

(b) A state bank may invest no more than twenty percent (20%) of its capital base in any single investment of the following types:

(1) Corporate debt obligations, including commercial paper, of any corporation that is not an affiliate or subsidiary of the bank;

(2) Revenue bond issues of any state of the United States or any municipality or any political subdivision thereof;

(3) Industrial development bonds for corporate obligors issued through any state of the United States or any political subdivision thereof;

(4) Securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such an investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that any such investment company or investment trust shall take the delivery of the collateral either directly or through an authorized custodian;

(5) Securities or other interests issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the European Bank for Reconstruction and Development, the Asian Development Bank, or the African Development Bank; and

(6) Uninsured demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia.

(c) Subject to such additional restrictions and limitations as may be imposed by the Bank Commissioner, a state bank may invest in any other investment securities which are not described in subsection (a) or subsection (b) of this section to the extent that such investment securities are authorized for national banks.

(d) A state bank may invest in any investment not described in subsections (a) and (b) of this section as may be authorized by State Bank Department rules.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2537.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (d).

Subchapter 5 — Loans

SECTION.

23-47-501. Loan limits — Maximum generally.

(a) The total indebtedness to any state bank of any person shall at no time exceed twenty percent (20%) of the capital base of the bank.

(b)(1) Obligations of a person as endorser or guarantor, accommodation or otherwise, of notes or other obligations shall be included in that person's loan limit.

(2) However, in the case of obligations that are endorsed without recourse, the limitation of twenty percent (20%) shall be applied to each primary debtor, but not to the liability, in such capacity, of the endorser.

(c)(1) A loan or group of loans that are within the legal loan limit of a state bank at the time the loan or loans are made shall be valid for legal loan limit purposes until maturity, as stated in the original contract, regardless of fluctuations in the bank's legal loan limit. However, if a bank's legal loan limit is reduced due to fluctuations in its capital base, a loan or group of loans to a borrower or borrowers that were within the legal loan limit prior to the reduction may become in violation of the bank's reduced legal loan limit upon the extension, renewal, or advancement of additional funds on the loan or group of loans occurring after the reduction in the bank's legal loan limits.

(2) State banks are required to calculate their legal loan limits on a quarterly basis to coincide with the requirement to calculate their capital base.

(d)(1) If in any instance it shall appear, as determined by the Bank Commissioner, that the interests of a group composed of individuals, partnerships, unincorporated associations, or corporations are so interrelated that, from a credit standpoint, applying standard and customary banking practice, they should be considered as a single unit for the purposes of extensions of credit, the total indebtedness of these interrelated customers shall be combined and treated as the indebtedness of a single customer in applying the loan limit.

(2) A state bank shall not be deemed to have violated this section solely by reason of the fact that the indebtedness of a group held by the bank exceeds the limitation of this section at the time the commissioner determines that the indebtedness of the group must be combined. However, if required by the commissioner, the state bank shall dispose of indebtedness of the group in the amount of excess of the limitation of this section within such reasonable time as shall be fixed by the commissioner.

History. Acts 1997, No. 89, § 1; 2005, No. 427, § 1; 2019, No. 62, § 1.

Amendments. The 2019 amendment deleted (b)(2)(B) and redesignated former (b)(2)(A) as (b)(2); in (b)(2), deleted "on consumer loans" following "obligations" and substituted "limitation of twenty percent (20%)" for "twenty percent (20%) limitation"; and made a stylistic change.

23-47-508. Disposition of real estate acquired through debt collection.

(a) Except as provided in subsection (b) of this section, real estate acquired through the collection of debts previously contracted in the ordinary course of business shall not be held by the state bank as an asset for a longer period than five (5) years.

(b) The Bank Commissioner is authorized to grant an extension of the holding period not to exceed five (5) additional years, or for shorter periods as circumstances warrant, based upon his or her discretion.

(c) Real estate held pursuant to this section shall be considered an asset of the bank. The value of the asset shall be based upon fair market value supported by an appraisal or appropriate evaluation when the bank acquires ownership of the property or as established by rule of the commissioner.

History. Acts 1997, No. 89, § 1; 2001, No. 62, § 2; 2019, No. 315, § 533.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (c).

Subchapter 6 — Subsidiaries

SECTION.

23-47-601. Operating subsidiaries.

(a)(1) With the prior approval of the Bank Commissioner, and subject to such conditions as may be prescribed by him or her, a state bank may engage in any activities which are a part of the business of banking or incidental thereto by means of an operating subsidiary and other activities permissible for state banks or their subsidiaries under statutory authority or as authorized by rules of the State Banking Board.

(2) For purposes of this section, an operating subsidiary in which a state bank may invest includes a corporation, limited liability company, or similar entity if the parent bank owns more than fifty percent (50%) of the voting, or similar type of controlling, interest of the subsidiary; or the parent bank otherwise controls the subsidiary and no other party controls more than fifty percent (50%) of the voting, or similar type of controlling interest, of the subsidiary.

(3) Subsidiaries which are not subject to this section are:

(A) A subsidiary in which the state bank's investment is made and limited pursuant to specific authorization in a statute or by rule; and

(B) A subsidiary, in which the state bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid loss in connection with a debt previously contracted.

(b) The total of each state bank's loans and investments in any single operating subsidiary and the total of each state bank's loans and investments in all subsidiaries, and bank service companies, will be considered by the commissioner and may be limited according to the commissioner's discretion, for safety and soundness purposes.

History. Acts 1997, No. 89, § 1; 1999, No. 112, § 2; 2019, No. 315, § 2538.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(1); and substituted "rule" for "regulation" in (a)(3)(A).

23-47-604. [Repealed.]

Publisher's Notes. This section, concerning capital development companies, was repealed by Acts 2017, No. 426, § 14. The section was derived from Acts 1997, No. 89, § 1; 2003, No. 860, § 15.

Subchapter 7 — Trust Powers

SECTION.

23-47-706. Official's oath or affidavit.

If Arkansas law requires that a corporation acting as trustee, executor, administrator, or in any capacity specified in this subchapter shall take an oath or make an affidavit, the president or chief executive officer, a vice president, or a trust officer of a state bank may take the necessary oath or execute the necessary affidavit.

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 3.

Amendments. The 2017 amendment substituted "If Arkansas law" for "In any case in which Arkansas law" and inserted "or chief executive officer".

23-47-708. Surrender of authorization — Board resolution — Commissioner certification — Activities affected.

(a)(1) Any state bank desiring to surrender its right to operate a trust department and to exercise the powers granted under this subchapter, in order to relieve itself of the necessity of complying with the requirements of this subchapter, or to have returned to it any securities which it may have deposited with the state and local authorities for the protection of private or court trusts, or for any other purpose, may file with the Bank Commissioner a certified copy of a resolution of its board of directors signifying the desire.

(2) Upon receipt of the resolution, the commissioner, after satisfying himself or herself that the bank has been relieved in accordance with Arkansas law of all duties as trustee, executor, administrator, custodian, registrar, paying agent or transfer agent of stocks or bonds, guardian of estates, assignee, receiver, or other fiduciary, under court, private, or other appointments previously accepted under authority of this subchapter may, in his or her discretion, issue to the bank a certificate certifying that the bank is no longer authorized to operate a trust department and exercise the powers granted by this subchapter.

(b) Upon the issuance of a certificate by the commissioner certifying that a state bank is no longer authorized to operate a trust department, the bank:

(1) Shall no longer operate a trust department or be subject to the provisions of this subchapter or State Bank Department rules made pursuant thereto;

(2) Shall be entitled to have returned to it any securities which it may have deposited with state or local authorities for the protection of private or court trusts; and

(3) Shall not operate a trust department or exercise thereafter any of the powers granted by this subchapter without first applying for and obtaining a new permit to operate a trust department to exercise such powers pursuant to the provisions of this subchapter.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2539.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b)(1).

Subchapter 9 — Safe-deposit Facilities

SECTION.
23-47-906. Remedies and procedures for nonpayment of rent.

23-47-906. Remedies and procedures for nonpayment of rent.

(a) If the safe-deposit box rental is delinquent for six (6) months, the bank, after at least thirty (30) days' notice by certified mail, return receipt requested, addressed to the lessee at the lessee's last known address on the books of the bank, may, if the rent is not paid within the time specified in the notice, open the safe-deposit box in the presence of a notary public and two (2) employees, at least one (1) of whom is an officer of the bank.

(b) The bank shall inventory the contents of the safe-deposit box in detail and place the contents of the safe-deposit box in a sealed envelope or container bearing the name of the lessee.

(c)(1) The bank shall hold the contents of the safe-deposit box subject to a lien for its rental, the cost of opening the safe-deposit box, and the damages in connection therewith.

(2) If the rental, cost, damages, and any other lawful charges for the use of the safe-deposit box or the holding of the contents of the safe-deposit box are not paid within two (2) years from the date of opening of the safe-deposit box, the bank may sell at that time or at any time before the period of time established by § 18-28-203 from the date the safe-deposit box lease expired, any of the contents of the safe-deposit box at public auction in the manner and upon the notice as is prescribed for the sale of real property under mortgage or deed of trust.

(3) Any unauctioned contents of safe-deposit boxes and any excess proceeds from the sale shall be remitted to the Auditor of State under the procedures prescribed by § 18-28-201 et seq.

History. Acts 1997, No. 89, § 1; 2019, No. 63, § 1.

Amendments. The 2019 amendment, in (c)(2), substituted "holding of the con-

tents of the safe-deposit box" for "holding of the contents thereof", "before the period of time established by § 18-28-203" for "prior to seven (7) years", and "any of the contents of the safe-deposit box" for "any part or all of the contents", and made stylistic changes.

CHAPTER 48

ORGANIZATION AND OPERATION

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

23-48-105. Agents for affiliate — Definitions.

(a)(1) As used in this section, "institution" means a bank, savings and loan association, or savings bank organized under the laws of any state or the United States.

(2) For the purpose of determining what constitutes an affiliated institution in this section, "control", as it pertains to the definition of "affiliate", has the meaning set forth in § 2(a)(2) of the Bank Holding Company Act of 1956, 12 U.S.C. § 1841.

(b) Any state bank may, upon compliance with the requirements of this section, agree to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, perform such other services as may receive the prior approval of the Bank Commissioner, and act as an agent for any affiliated institution.

(c) A state bank that proposes to enter into an agency agreement under this section shall, prior to entering into such an agreement, file with the commissioner:

(1) A notice of intention to enter into an agency agreement with an affiliated institution;

(2) A description of the services proposed to be performed under the agency agreement; and

(3) A copy of the agency agreement.

(d)(1) If any proposed service is not specifically designated in subsection (b) of this section, and has not previously been approved in a

State Bank Department rule, the commissioner shall decide whether to approve the offering of the service after receipt of the notice required in subsection (c) of this section.

(2) In deciding whether to approve any proposed service that is not specifically designated in subsection (b) of this section, the commissioner shall consider whether the service would be consistent with applicable federal and state law and the safety and soundness of the principal and agent institutions.

(e) A state bank may not under an agency agreement:

(1) Conduct any activity as an agent that it would be prohibited from conducting as a principal under applicable state or federal law; or

(2) Have an agent conduct any activity that the state bank, as principal, would be prohibited from conducting under applicable state or federal law.

(f) The commissioner may order a state bank or any other institution subject to the commissioner's enforcement powers to cease acting as an agent or principal under any agency agreement that the commissioner finds to be inconsistent with safe and sound banking practices.

(g) Notwithstanding any other provision of the law of this state, a state bank acting as an agent for an affiliated institution in accordance with this section shall not be considered to be a branch of that institution.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2540.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (d)(1).

Subchapter 2 — Reserves and Dividends

SECTION.

23-48-202. Reserve requirements.

A state bank not a member of the Federal Reserve System shall maintain at all times a reserve fund as required by the Federal Reserve Board, unless otherwise provided by State Bank Department rules.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2541.

Amendments. The 2019 amendment substituted "rules" for "regulations".

23-48-203. Payment of dividends.

Any state bank may, from time to time, declare and pay dividends in accordance with State Bank Department rules.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2542.

Amendments. The 2019 amendment substituted "rules" for "regulations".

Subchapter 3 — Organization and Management Generally

Effective Dates. Acts 2017, No. 548, § 11: Mar. 21, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the efficient operation of state banks and bank holding companies doing business in Arkansas is a critical need for Arkansas and the banking and financial institutions industry operating under state law; that the Arkansas Banking Code of 1997 does not currently allow a state bank in Arkansas to pursue efficient operations and regulatory cost savings under state law through a merger transaction with a wholly owned subsidiary bank of an Arkansas bank holding company that results in the subsidiary bank as the surviving entity of the merger transaction; and that this act is immediately necessary because it is critical that the provisions of this act become effective as soon as possible to encourage efficiency and regulatory costs savings to banks and financial institutions operating in Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2021, No. 253, § 6: Mar. 4, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the risk of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations is causing delays in conducting business due to the inability to hold in-person shareholders' meetings; that allowing Arkansas corporations and banks to conduct shareholders' meetings through remote communication, solely or partially, can reduce the uncertainty for Arkansas corporations and banks and allow a corporation or bank to continue to operate; and that this act is immediately necessary to provide Arkansas corporations and banks with the ability to conduct their corporate affairs without risk of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-48-301. Application for incorporation.

(a) Any one (1) or more natural persons, eighteen (18) years of age or older, a majority of whom shall be bona fide residents of this state, who may desire to associate themselves by articles of incorporation for the purpose of establishing any state bank, may apply to the Bank Commissioner to be incorporated.

(b)(1) An application for authority to organize a state bank shall be submitted to the commissioner in the form that the commissioner may prescribe and shall include the following information:

(A) The name, citizenship, residence, and occupation of each incorporator, and of each of the initial directors, and the name and address of each stock subscriber, and the amount of stock paid for by each;

(B) The name and address of an individual within the state to whom notice to all incorporators may be sent;

(C) The total initial capital and the number of shares of each class of the capital stock to be authorized;

(D) The corporate name;

(E) The proposed location of the main banking office;

(F) If known, the name and residence of the proposed president or chief executive officer, operations officer, and, if applicable, the name and address of the proposed trust officer;

(G) The names of the natural persons who propose to own or control more than five percent (5%) of the capital stock;

(H) The past and present connection with any depository institution, financial institution, or national trust company, other than as a customer on terms generally available to the public, of each proposed director and each subscriber to more than five percent (5%) of the capital stock;

(I) Evidence of the character, financial responsibility, and ability of the incorporators and proposed directors;

(J) A brief statement of the purposes for which the state bank is incorporated, and whether it shall operate a trust department;

(K) The term for which the state bank is to exist, which shall be perpetual unless otherwise limited;

(L) A statement signed and verified by the incorporators that the capital stock has been fully subscribed and the purchase price therefor has been paid into an escrow account approved by the commissioner and that the requirements of § 23-48-310 have been met;

(M) Proof that application for federal deposit insurance has been made;

(N) Recitation of the need for and advisability of the approval to organize;

(O) Any information required under subdivision (b)(2) of this section not otherwise listed in this subdivision (b)(1); and

(P) Any additional information that the commissioner may require.

(2) The proposed articles of incorporation shall contain the following information:

(A) The name of the proposed institution;

(B) The town or city in which the proposed institution is to be located;

(C) The amount of capital stock authorized, the number of shares of each class, the relative preferences, powers, and rights of each class, and the amount of paid-in surplus;

(D) The names and places of residence of the stockholders and the number of shares held by each;

(E) A statement whether voting for directors shall or shall not be cumulative and the extent, if any, of the preemptive rights of stockholders;

(F) The term of the proposed institution's existence, which shall be perpetual unless otherwise limited;

(G) The names of the initial board of directors composed of no fewer than three (3) natural persons who shall serve until the next annual meeting or until their successors are regularly elected and qualified;

(H) Other information that the State Bank Department may require; and

(I) Other proper provisions that the incorporators may choose to insert for the regulation of the internal affairs and business of the state bank.

(3)(A) Five (5) copies of the proposed articles of incorporation and proposed bylaws shall be filed with the application under subdivision (b)(1) of this section.

(B) The application and articles of incorporation shall be signed by each of the incorporators and shall be accompanied by a nonrefundable filing fee of not more than fifteen thousand dollars ($15,000) as set by department rules.

(c) All persons purporting to act as or on behalf of a state bank knowing there was no incorporation under this chapter are jointly and severally liable for all liabilities created while so acting.

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 4; 2019, No. 315, § 2543; 2019, No. 391, § 5.

Amendments. The 2017 amendment substituted "president or chief executive officer" for "president, chief executive officer" in (b)(6).

The 2019 amendment by No. 315 substituted "rules" for "regulations" in the introductory language of (b).

The 2019 amendment by No. 391 substituted "eighteen (18) years of age or older" for "eighteen (18) years old or older" in (a); redesignated the introductory language of (b) as (b)(1); in the introductory language of (b)(1), inserted "following" preceding "information", deleted "set forth in this subsection and subsection (c) of this section, and contain additional information which the commissioner may require" following "information", and deleted the second and third sentences; redesignated former (b)(1) through (b)(14) as (b)(1)(A) through (b)(1)(N); added (b)(1)(O) and (b)(1)(P); redesignated former (c) as (b)(2); added "information" following "following" in the introductory languages of (b)(2) and (c)(2); redesignated

former (c)(1) through (c)(9) as (b)(2)(A) through (b)(2)(I); added (b)(3); and redesignated former (d) as (c).

23-48-306. Relocation of place of business — Amendment of articles.

(a)(1) Any state bank may apply for authority to change its place of business from one (1) municipality to another by filing with the Bank Commissioner, as an amendment to its articles of incorporation, two (2) copies of a resolution to that effect, and such additional information which the commissioner may require.

(2) The resolution must be adopted upon the affirmative vote of the holders of at least a simple majority of the outstanding shares entitled to vote thereon, at any annual or special meeting of the stockholders.

(3) Both copies of the resolution shall be signed by the president or chief executive officer or a vice president.

(4) One (1) of the copies of the resolution shall be retained by the commissioner. The other copy, if the commissioner and State Banking Board approve the amendment, shall be returned with the commissioner's endorsement of approval thereof.

(b) The amendment shall become effective when it has been approved by the commissioner and the board.

(c) Each application for authority to change a state bank's place of business shall be accompanied by a fee as shall be set by State Bank Department rule, which fee shall be paid to the department.

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 5; 2019, No. 315, § 2544.

Amendments. The 2017 amendment inserted "or chief executive officer" in (a)(3).

The 2019 amendment substituted "rule" for "regulation" in (c).

23-48-307. Objects and method of charter amendment.

(a) Any state bank, through amendment to its articles of incorporation, may from time to time do the following, which shall be in addition to all things it may otherwise do through amendment under the Arkansas Banking Code of 1997:

(1) Change its corporate name;

(2) Change, enlarge, or diminish its corporate purposes, in accordance with the applicable state law;

(3) Increase or decrease its authorized capital stock, subject to the limitations and in the manner set out in § 23-48-311;

(4) Effect splits of its shares or a distribution of some portion of its assets, other than cash or its own stock; and

(5) Effect any fundamental change in its corporate affairs which may be accomplished by charter amendment under any other statute of Arkansas.

(b) Articles of incorporation of a state bank may be amended at any annual or special meeting of the stockholders.

(c) Except as provided in § 23-48-313(a)(1)(C), unless a greater percentage of votes is required in the articles of incorporation for an amendment of any provision of the articles of incorporation, an amendment to the articles of incorporation may be adopted on the affirmative vote of the owners of a simple majority of each class of stock entitled to vote on the proposed amendment.

History. Acts 1997, No. 89, § 1; 2017, No. 548, § 2.

Amendments. The 2017 amendment added "Except as provided in § 23-48-313(a)(1)(C), unless a greater percentage of votes is required in the articles of incorporation for an amendment of any provision of the articles of incorporation" in (c).

23-48-308. Filing of amendments to articles of incorporation.

(a)(1) An application for approval of a proposed charter amendment described in § 23-48-307 shall be submitted to the Bank Commissioner in the manner and form that the commissioner may prescribe and shall include the information set forth in subsection (b) of this section, and contain additional information which the commissioner may require.

(2) The application shall include duplicate copies of each proposed charter amendment, in the form of an amendment to the articles of incorporation, each copy to be certified by the president or chief executive officer or a vice president.

(b) Each duplicate shall have annexed thereto, over the official signatures, a certificate showing:

(1) The date on which the amendment was authorized by the stockholders;

(2) The number of shares of each class entitled to vote on the amendment which were outstanding on the date of the stockholders' meeting;

(3) The number of shares of each class entitled to vote on the amendment whose owners were present in person or by proxy;

(4) The number of shares of each class voted for and against the amendment; and

(5) The manner in which the meeting was called and the time and manner of giving notice, with a certification that the meeting was lawfully called and held.

(c) The commissioner may also require the delivery to him or her of additional copies of the proposed amendment that he or she may desire in order to present the matter to the State Banking Board and any parties opposing the amendment.

(d)(1) One (1) of the duplicate copies of any charter amendment filed with the commissioner and certified as prescribed in this section, bearing an endorsement of the commissioner showing that the amendment has been approved by him or her and by the board, shall be returned to the applicant state bank.

(2) The amendment shall become effective when it has been approved by the commissioner and the board.

(e)(1) Each application for approval of a proposed charter amendment described in § 23-48-307 shall be accompanied by a fee of not less

than one hundred dollars ($100) nor more than five hundred dollars ($500).

(2) The fee shall be set by State Bank Department rule and shall be paid to the department.

(f) This section does not apply to the issuance of preferred stock when the issuance is authorized and issued by a state bank when approved by the commissioner and otherwise in compliance with § 23-48-313(a)(1)(C).

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 6; 2017, No. 548, § 3; 2019, No. 315, § 2545.

Amendments. The 2017 amendment by No. 198 inserted "chief executive officer or" in (a)(2).

The 2017 amendment by No. 548 added (f).

The 2019 amendment substituted "rule" for "regulation" in (e)(2).

23-48-311. Increase or decrease of capital stock.

(a) The authorized capital stock of any state bank may be increased or decreased by amendment to its articles of incorporation, subject to the requirements pertaining to such amendments contained in §§ 23-48-307 and 23-48-308.

(b) A capital stock increase may be effected by the issuance and sale of additional shares, which additional shares may be of the same class as the shares then outstanding or may be represented by a different class or classes having privileges, preferences, and voting rights greater or less than those appurtenant to the then outstanding shares, whether common stock or preferred stock.

(c) Stock dividends may be paid out of surplus or undivided profits.

(d) A state bank may authorize common stock, which may be retained, unissued by the institution, until such time as the board of directors shall order its sale or distribution.

(e) Except as otherwise permitted under § 23-47-102(c), a decrease of the capital stock shall not be permitted without the consent of the Bank Commissioner and in no event shall the capital be reduced to a figure below the minimum prescribed by law.

History. Acts 1997, No. 89, § 1; 2017, No. 548, § 4.

Amendments. The 2017 amendment substituted "Except as otherwise permitted under § 23-47-102(c), a decrease of the capital stock shall not be" for "No decrease of the capital stock shall be" in (e).

23-48-312. Liability of shareholders — Assessment of stock.

(a)(1) Except as otherwise provided in this section, a purchaser from a state bank of its own shares is not liable to the state bank or its creditors with respect to the shares except to pay the full consideration, fixed as provided by law, for which the shares were issued or were to be issued.

(2) Except as otherwise provided in this section, or unless otherwise provided in the articles of incorporation, a shareholder of a state bank

is not personally liable for the acts or debts of the state bank except that he or she may become personally liable by reason of his or her own acts or conduct.

(b)(1) When, in the opinion of the Bank Commissioner, the report of an examination of a state bank discloses bad or worthless assets which should be charged off, he or she shall immediately instruct the officers of the state bank to collect and realize upon the assets within a time fixed by him or her, and, if not collected or realized upon within that time, the assets shall immediately be charged off.

(2) If the capital, as defined by the commissioner, is thereby impaired, the commissioner shall order the directors to make an assessment upon the capital stock in form and manner as provided in subsection (c) of this section to restore capital.

(c)(1) The directors of every state bank shall have power and authority to levy and collect assessments on the stock of the state bank and shall make the levy on the order of the commissioner for the purpose of restoring any deficiency that may occur by reason of the impairment of the capital of the state bank.

(2) Should the assessment not be paid within thirty (30) days from the date the assessment is made, the assessed stock, or so much thereof as may be necessary, shall be sold at public auction to provide funds to meet the assessment.

(3) A lien is created in favor of the state bank on the stock to pay the assessments so made.

(d)(1) For purposes of this section, a state bank's capital is impaired when, in the opinion of the commissioner, its assets are of such a character and value that it is unable in the ordinary course of business to meet the minimum capital requirements as specified from time to time by administrative policies adopted by the commissioner.

(2) In the absence of fraud or collusion, the determination of the commissioner as to impairment of capital is conclusive.

(e) Subdivision (b)(2) of this section and subsection (c) of this section do not apply to a state bank if the state bank:

(1) Is required to file reports under section 13 or section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017; or

(2) Has a class of equity securities registered under section 12(b) or section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017.

History. Acts 1997, No. 89, § 1; 2017, No. 548, § 5.

Amendments. The 2017 amendment added (e).

U.S. Code. Sections 12, 13, and 15 of the Securities Exchange Act of 1934, referred to in this section, are codified as 15 U.S.C. § 78l, 15 U.S.C. § 78m, and 15 U.S.C. § 78o, respectively.

23-48-313. Classes of stock — Fractional shares — Scrip.

(a)(1)(A) The shares of the capital stock of any state bank may consist of shares of common stock or of common and preferred stock.

(B) Common or preferred stock may be divided into classes with the designations, preferences, limitations, retirement provisions, and relative rights as shall be stated in the articles of incorporation or an amendment thereto.

(C)(i) If provided in the articles of incorporation of a state bank, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits stated in § 4-27-601, of:

(a) Any class of shares before any shares of that class are issued; or

(b) One (1) or more series within a class before any shares of that series are issued.

(ii) Each series of a class shall be given a distinguishing designation.

(iii) All shares of a series shall have preferences, limitations, and relative rights that are identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(iv)*(a)* Before issuing any shares of a class or series created under this section, the state bank shall deliver to the Bank Commissioner for filing the articles of amendment that are effective without shareholder action and provide a copy of the resolutions adopted by the board of directors approving the amendment.

(b) The articles of amendment shall include:

(1) The name of the state bank;

(2) A statement that the number of shares to be issued under this section are within the number of shares authorized to be issued under the articles of incorporation of the state bank;

(3) The text of the amendment determining the terms of the class or series of shares;

(4) The date of adoption of the amendment; and

(5) A statement that the amendment was adopted by the board of directors.

(2)(A) The voting rights of any class of stock may be denied or restricted, except that the holder of stock belonging to a class of stock issued as nonvoting shall be entitled to vote in respect to a dissolution or a merger or consolidation, or in respect to any proposal that would adversely affect the preferences, privileges, and other rights annexed to the shares.

(B) A stockholder's right to vote under Arkansas Constitution, Article 12, § 8, upon a proposal to increase the stock of the state bank may not be abridged.

(b)(1) Unless prohibited by the articles of agreement, or an amendment thereto, or by bylaws, a state bank may issue a certificate for a

fractional share or, by action of its board of directors, may issue, in lieu thereof, scrip in bearer or registered form which shall entitle the holder to receive a certificate for a full share upon the surrender of the scrip aggregating a full share.

(2) Unless otherwise provided in the articles of agreement or in an amendment thereto, or in the bylaws, a fractional share shall, but scrip shall not, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation.

(3) When scrip is issued, the directors may provide that it shall become void if not exchanged for certificates representing full shares before a specified date, or the board may provide that the shares for which the scrip is exchangeable may be sold by the state bank and the proceeds thereof distributed to the holders of the scrip.

History. Acts 1997, No. 89, § 1; 2017, No. 548, § 6.

Amendments. The 2017 amendment added (a)(1)(C).

23-48-315. Issuance and sale of capital notes and other subordinated indebtedness.

(a)(1) With the written consent of the Bank Commissioner, a state bank may, through action of its board of directors and without requiring any action by stockholders, issue and sell its capital notes or other subordinated indebtedness at:

(A) Not less than par; or

(B) Par, less a customary discount if sold through a broker-dealer registered under section 15 of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017, or exempt from such registration pursuant to the Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

(2) The capital notes or other subordinated indebtedness may be sold for cash or, with the written consent and approval of the commissioner, for property.

(b)(1) The capital notes or other subordinated indebtedness shall be in such denominations, and the holders thereof shall be entitled to such annual return thereon, as the commissioner may approve.

(2) The capital notes or other subordinated indebtedness shall provide that they may be retired at such time or times and in such manner as may be fixed by the board of directors of the state bank but in no event later than twenty (20) years, in the case of capital notes, or thirty (30) years, in the case of other subordinated indebtedness, after the date of their issuance.

(3) The aggregate par value of the capital notes or other subordinated indebtedness shall not exceed one-half (½) of the capital base of the issuing state bank, or such lesser proportion of the capital base as may be determined by rule or order of the commissioner.

(4)(A) The state bank, in connection with the issue, subscription, or sale of capital notes or other subordinated indebtedness, may confer

upon the holder of each capital note or other subordinated indebtedness the right to convert the obligation into shares of the common stock of the state bank on such terms as are set forth in the instrument evidencing the conversion rights. The terms may include any agreements not repugnant to law for the protection of the conversion rights, including without limitation the generality of such authority:

(i) Restrictions upon the authorization or issuance of additional shares;

(ii) Provisions for the adjustment of the conversion price or ratio;

(iii) Provisions concerning rights in the event of reorganization, merger, consolidation, or sale or other disposition of all, or substantially all, of the assets of the state bank; and

(iv) Provisions for the reservation of authorized but unissued shares to satisfy the conversion rights.

(B) If the shares into which the obligations are convertible would be subject to preemptive rights if issued for cash, the conferring of the conversion rights must be authorized at a stockholders' meeting on a vote of at least a majority of the shares of the issued and outstanding capital stock of the state bank. The vote shall release the preemptive rights to the shares required to satisfy such conversion rights.

(c)(1) Capital notes or other subordinated indebtedness shall at the time of their issuance be, and shall at all times thereafter remain, subordinate in rank and subject to the prior payment of all types of deposits of the state bank.

(2) The state bank may, for the security and protection of the holders of the capital notes or other subordinated indebtedness, agree upon such restrictions on the distribution or payment of dividends on its capital stock as the board of directors may decide.

(d)(1) Capital notes or other subordinated indebtedness and accrued return thereon may be retired at any time, in whole or in part, with the written approval of the commissioner, unless otherwise provided in the capital notes or other subordinated indebtedness, as applicable.

(2) In any case in which capital notes or other subordinated indebtedness issued under the provisions of this section are callable in a period less than thirty (30) years after their issuance, the state bank issuing the capital notes or other subordinated indebtedness may, by a provision inserted therein to that effect, reserve the right, from time to time, to extend the time for the retirement or redemption of the capital notes or other subordinated indebtedness. In that event, the state bank issuing the capital notes or subordinated indebtedness may, by vote of a majority of its board of directors, with the consent of the commissioner, make the extension.

History. Acts 1997, No. 89, § 1; 2017, No. 548, § 7.

Amendments. The 2017 amendment added "and other subordinated indebtedness" in the section heading; inserted "or other subordinated indebtedness" throughout the section; redesignated former (a)(1) as present (a)(1) and (a)(1)(A); in the introductory language of (a)(1), added "With the written consent of the

Bank Commissioner" and deleted "with the written consent of the Bank Commissioner" following "stockholders"; added (a)(1)(B); inserted "in the case of capital notes, or thirty (30) years, in the case of other subordinated indebtedness" in (b)(2); in (b)(3), inserted "aggregate", inserted the first occurrence of "capital", and added "or such lesser proportion of the capital base as may be determined by rule or order of the commissioner"; in (b)(4)(A), substituted "obligation" for "note" and "without limitation" for "but without limiting"; substituted "state bank" for "corporation" in (b)(4)(A)(iii); added "as applicable" at the end of (d)(1); and, in (d)(2), substituted "thirty (30)" for "twenty (20)" and inserted "or redemption".

U.S. Code. Section 15 of the Securities Exchange Act of 1934, referred to in this section, is codified as 15 U.S.C. § 78o.

The Gramm-Leach-Bliley Act, Pub. L. No. 106-102, referred to in this section, is codified in part as 12 U.S.C. §§ 1831v–1831y, 12 U.S.C. § 1848a, 12 U.S.C. § 2908, 15 U.S.C. § 6701 et seq., 15 U.S.C. § 6801 et seq., and 15 U.S.C. § 6901 et seq., and as amendments to 12 U.S.C. § 1821, 12 U.S.C. § 1828, 12 U.S.C. § 1831u, 12 U.S.C. § 1841 et seq., 15 U.S.C. § 78c et seq., and other sections within Titles 12, 15, 16, and 18.

23-48-316. Transfer of stock.

(a) The stock of every state bank shall be transferrable only on the books of the bank.

(b)(1) When any number of shares of the stock of a state bank or shares of stock in an Arkansas bank holding company shall be transferred to any transferee or joint transferees, the state bank or Arkansas bank holding company shall promptly transmit to the Bank Commissioner a certificate, on a form prescribed by the commissioner, showing the transfer.

(2) The certificate also shall show the total number of shares at that time outstanding in the name of the transferee or anyone known by the state bank or Arkansas bank holding company to be the nominee of the transferee or holding in trust for the transferee.

(3) This subsection does not apply to a state bank or Arkansas bank holding company that:

(A) Is required to file reports under section 13 or section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017; or

(B) Has a class of equity securities registered under section 12(b) or section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017.

History. Acts 1997, No. 89, § 1; 2017, No. 548, § 8.

Amendments. The 2017 amendment rewrote (b)(3).

U.S. Code. Sections 12, 13, and 15 of the Securities Exchange Act of 1934, referred to in this section, are codified as 15 U.S.C. § 78l, 15 U.S.C. § 78m, and 15 U.S.C. § 78o, respectively.

23-48-317. Change in control.

(a) As used in this section, unless the context otherwise requires, "control" has the meaning set forth in 12 U.S.C. § 1841(a)(2).

(b)(1) Prior approval by the Bank Commissioner of any transfer of ownership shall not be required unless and until:

(A) A transfer reported to the commissioner would result in the control by the transferee and any nominee of the transferee and any person holding in trust for the transferee of twenty-five percent (25%) or more of the capital stock of the state bank or Arkansas bank holding company; or

(B) A transfer reported to the commissioner would increase a then-existing ownership of the capital stock of a state bank or Arkansas bank holding company already controlled by the transferee to twenty-five percent (25%) or more of the capital stock of the state bank or Arkansas bank holding company.

(2)(A) In either of the situations set out in subdivisions (b)(1)(A) and (B) of this section, no shares held in such ownership may be voted unless the ownership, and the transfers mentioned in subdivisions (b)(1)(A) and (B) of this section, shall be approved by the commissioner and his or her approval given to the transferee in writing.

(B) The commissioner in his or her discretion may at any time require any transferee to certify in writing as to the extent of the legal or beneficial ownership by the transferee of the stock of the state bank or Arkansas bank holding company.

(c)(1) Any transferee seeking to acquire twenty-five percent (25%) or more of the capital stock of a state bank or Arkansas bank holding company shall file with the commissioner an application for approval submitted to the commissioner in the form that the commissioner may prescribe, the application to be accompanied by a filing fee of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) as set by State Bank Department rule.

(2) The application shall include the information set forth in subsection (d) of this section and contain such additional information as the commissioner may require.

(d) An application for approval to acquire control of a state bank or an Arkansas bank holding company shall contain evidence that:

(1) The proposed transaction will promote the safety and soundness of the institution to be controlled;

(2) If the applicant is a bank holding company, the transaction will not result in a violation of the provisions of § 23-48-405;

(3) The applicant bank or the bank subsidiaries of an applicant bank holding company adequately serve the convenience and needs of the communities served by them in accordance with the Community Reinvestment Act of 1977; and

(4)(A) The applicant intends to adequately serve the convenience and needs of the communities served by the state bank or state bank subsidiaries proposed to be controlled in accordance with the Community Reinvestment Act of 1977.

(B) The application shall specifically address the proposed initial capital investments, proposed loan policies, proposed investment policies, proposed dividend policies, and general plan of proposed business of the institution proposed to be controlled, including the full range of consumer and business services which are proposed to be offered.

(e) The commissioner shall approve an application to acquire control of a state bank or an Arkansas bank holding company if he or she is satisfied that:

(1) The evidence and information contained in the application would result in the likelihood that the public interest would be served;

(2) The safety and soundness of the institution to be controlled is adequately addressed; and

(3) Approval of the application, if the applicant is a bank holding company, will not result in a violation of the provisions of § 23-48-405.

(f) The commissioner may by rule or order waive the requirements required under this section if:

(1) A change in control will simultaneously occur with a proposed merger transaction under § 23-48-503(a); and

(2) A transferee submits a merger application to:

(A) The commissioner and the federal bank supervisory agency, in the case of a state bank;

(B) The home-state regulator and the federal bank supervisory agency, in the case of an out-of-state bank; or

(C) The United States Office of the Comptroller of the Currency, in the case of a national bank.

(g) A plan of exchange approved by the commissioner under § 23-48-601 does not satisfy the requirements for a change in control under subsection (b) of this section unless:

(1) The plan of exchange is executed by a bank holding company as defined in § 23-45-102; and

(2) The bank holding company executing the plan of exchange under § 23-48-601 is the existing bank holding company of the subject state bank.

History. Acts 1997, No. 89, § 1; 2017, No. 195, § 1; 2019, No. 315, § 2546.

Amendments. The 2017 amendment added (f) and (g).

The 2019 amendment substituted "rule" for "regulation" in (c)(1).

23-48-318. Stockholder meetings — Notice of special meeting.

(a) A special meeting of the stockholders, whether held for the purpose of amending the articles of incorporation or for any other lawful purpose, may be called as prescribed in the bylaws or, if the bylaws are silent in that respect, by the president or chief executive officer or by resolution of the board of directors.

(b) Written notice of the special meeting shall be given to each stockholder entitled to vote at the meeting, other than stockholders who waive notice in writing, for the time and in the manner set out in the bylaws subject to the following minimum requirements:

(1) The notice must be signed by an officer of the state bank;

(2) The notice must state the time and place of the meeting and must also state the nature of the proposals to be submitted to the stockholders at the meeting;

(3) The notice must be mailed to each such stockholder, other than those waiving notice, by first-class mail, postage prepaid, directed to the stockholder at the address of the stockholder shown on the stock records of the state bank. The depositing of the notice in the mail as above prescribed shall constitute the giving of the notice. It is not necessary in any event that the mailing be by registered or certified mail; and

(4) If the meeting is called for the purpose of increasing the authorized capital stock of the state bank, the notice shall be mailed at least sixty (60) days prior to the meeting, but if the meeting is called for any other purpose, the notice shall be mailed for such number of days prior to the meeting as may be prescribed in the bylaws. In no event shall mailing be less than ten (10) days prior to the date of the meeting.

(c) Any stockholder may waive the right to receive notice of special meetings of the stockholders by:

(1) A written waiver of the right, signed by the stockholder, which shall be effective as a waiver until revoked; or

(2) The stockholder's attendance, in person or by proxy, at the meeting.

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 7.

Amendments. The 2017 amendment, in (a), substituted "that respect" for "such respect" and "president or chief executive officer or" for "president or".

23-48-320. Stockholder meetings — Quorum — Voting.

(a)(1) Each share of stock shall be entitled to one (1) vote on each matter submitted at a meeting of stockholders except to the extent that the voting rights of any class are limited or denied, to an extent permitted by law, by the articles of incorporation or an amendment thereto.

(2)(A) Subject to the provisions of subsection (d) of this section, in electing directors at meetings of stockholders, each stockholder of a state bank shall have a right to vote the number of shares owned by him or her for as many persons as there are directors to be elected, or to cumulate the shares so as to give one (1) candidate as many votes as the number of directors multiplied by the number of shares of stock held by him or her shall equal.

(B) The stockholder may distribute his or her votes on the same principle among as many candidates as he or she shall see fit, unless it is provided otherwise in the articles of incorporation or the bylaws of the state bank.

(b)(1) A majority of the issued and outstanding shares entitled to vote at the meeting shall constitute a quorum.

(2) If a quorum is present, the vote of a majority of the shares present or represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders unless the vote of a larger majority is required by the bylaws or by this or any other applicable statute.

(c)(1) A stockholder may vote in person, by written proxy, or by means of remote communication according to subdivision (c)(3) of this section.

(2) A proxy shall not be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy, but a proxy may be of indefinite duration if coupled with an interest.

(3) A stockholder participating in a meeting of stockholders by means of remote communication as provided in § 23-48-326(c) shall be deemed present and is entitled to vote at the meeting if the state bank has implemented reasonable measures to:

(A) Verify that each person participating remotely is a stockholder; and

(B) Provide each stockholder participating remotely with a reasonable opportunity to participate in the meeting, including an opportunity to vote on matters submitted to the stockholders.

(d)(1) For a state bank chartered on or before May 30, 1997, the stockholders of the state bank shall have cumulative voting privileges in the election of directors unless the articles of incorporation of the state bank otherwise provide.

(2) For a state bank chartered after May 30, 1997, there shall be no cumulative voting privilege unless the state bank's articles of incorporation so provide.

History. Acts 1997, No. 89, § 1; 2017, No. 548, § 9; 2021, No. 253, § 4.

Amendments. The 2017 amendment redesignated former (d) as (d)(2); substituted "a state bank" for "all state banks" in (d)(2); and added (d)(1).

The 2021 amendment added "or by means of remote communication according to subdivision (c)(3) of this section" in (c)(1); substituted "A proxy shall not" for "No proxy shall" in (c)(2); added (c)(3); and substituted "stockholders" for "shareholders" in (d)(1).

23-48-323. Officers — Selection — Terms — Bonds.

(a)(1) A state bank shall have:

(A) A president or chief executive officer, or both;

(B) A secretary; and

(C) Any other officers as the directors may from time to time designate.

(2) An individual may hold more than one (1) office.

(b) The officers shall hold their offices for a term of one (1) year or until successors are elected unless sooner removed by the board of directors.

(c) The board shall require bonds of the officers as it shall deem proper and necessary to protect the funds of the state bank.

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 8.

Amendments. The 2017 amendment redesignated former (a) as (a)(1) and (a)(2); added "or chief executive officer, or both" in (a)(1)(A); and added "Any" in (a)(1)(C).

23-48-326. Application of Arkansas Business Corporation Act.

(a) A state bank and a subsidiary trust company are subject to the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., to the extent that it is not in conflict with the Arkansas Banking Code of 1997.

(b) If the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., is in conflict with the Arkansas Banking Code of 1997, then the Arkansas Banking Code of 1997 shall control.

(c) Annual or special shareholders' meetings may be held by corporations or banks solely or partially through remote communication if authorized by the corporation's or bank's board of directors.

History. Acts 1997, No. 89, § 1; 2021, No. 253, § 5.

Amendments. The 2021 amendment designated the former section as (a) and (b); in (a), substituted "A state bank and a subsidiary trust company are subject to" for "All state banks and subsidiary trust companies shall be subject to current provisions of", inserted "of 1987", and substituted "it is" for "those provisions are"; in (b), substituted "If" for "In the event that any provision of" and inserted "of 1987"; added (c); and made stylistic changes.

23-48-327. Registered office and registered agent for service of process.

(a)(1) A state bank may designate and maintain a registered office and registered agent for service of process by filing a written designation with the Bank Commissioner.

(2) The registered office:

(A) May be the same as any of the bank's places of business; and

(B) Shall have the same address as the office of the registered agent.

(3) The registered agent may be a:

(A) Resident of the State of Arkansas;

(B) State bank or domestic profit or nonprofit corporation; or

(C) Foreign profit or nonprofit corporation authorized to transact business in this state.

(4) The written designation shall contain the:

(A) Name of the state bank;

(B) Street address of the bank's registered office; and

(C) Name of the bank's registered agent at the bank's registered office.

(5)(A) The state bank may revoke the written designation by filing a statement of revocation with the commissioner.

(B) The statement of revocation is effective thirty-one (31) days after filing.

(b)(1) A state bank may change its registered office or registered agent by filing a statement of change with the commissioner that sets forth:

(A) Its name;

(B) The name and street address of its current registered office and registered agent;

(C) The name and street address of its new registered agent and registered office; and

(D) The new registered agent's written consent, either on the statement or attached to it, to the appointment.

(2) A registered agent may change the street address of the registered office of any state bank to the agent's current office by:

(A) Notifying the bank in writing of the change; and

(B) Signing, either manually or by facsimile, and filing with the commissioner a statement of change that complies with the requirements of this subsection and recites that the bank has been notified of the change.

(c)(1) The registered agent of a state bank may resign and discontinue the registered office by filing with the commissioner the original and two (2) exact or conformed copies of a signed statement of resignation.

(2) The statement of resignation may include a statement that the registered office is discontinued.

(3) The commissioner shall mail a filed copy of the statement to the registered office if not discontinued.

(4) The commissioner shall mail the other filed copy to the main office of the state bank as listed on the records of the State Bank Department.

(5) The termination of the registered agent's appointment and, if applicable, discontinuance of the registered office is effective thirty-one (31) days after the statement is filed.

(d) The State Banking Board shall provide by rule a filing fee of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for the filings under this section.

(e)(1) If a state bank designates and maintains a registered office and registered agent under this section, then the registered agent is the state bank's exclusive agent for service of any process, notice, or demand required or permitted to be served on the bank.

(2) If a state bank does not designate and maintain a registered office and registered agent under this section, then the president or chief executive officer of the state bank is the bank's agent for service of any process, notice, or demand required or permitted to be served on the state bank.

History. Acts 2005, No. 426, § 1; 2017, No. 198, § 9.

Amendments. The 2017 amendment inserted "or chief executive officer" in (e)(2).

Subchapter 4 — Bank Holding Companies

SECTION.

23-48-403. Penalties.

(a) Any person who willfully violates any provision of this subchapter or order issued by the Bank Commissioner pursuant to this subchapter or any State Bank Department rule is guilty of a Class A misdemeanor.

(b) Any person who willfully participates in a violation of any provision of this subchapter is guilty of a Class A misdemeanor.

History. Acts 1997, No. 89, § 1; 2005, No. 1994, § 354; 2019, No. 315, § 2547.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a).

23-48-404. Administration.

The Bank Commissioner is authorized to and shall administer and carry out the provisions of this subchapter and shall issue such rules and orders as may be necessary to discharge this duty and to prevent evasions of this subchapter.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2548.

Amendments. The 2019 amendment substituted "rules" for "regulations".

Subchapter 5 — Mergers, Consolidations, Conversions, Emergency Acquisitions, Purchases, or Assumptions

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Effective Dates. Acts 2017, No. 548, § 11: Mar. 21, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the efficient operation of state banks and bank holding companies doing business in Arkansas is a critical need for Arkansas and the banking and financial institutions industry operating under state law; that the Arkansas Banking Code of 1997 does not currently allow a state bank in Arkansas to pursue efficient operations and regulatory cost savings under state law through a merger transaction with a wholly owned subsidiary bank of an Arkansas bank holding company that results in the subsidiary bank as the surviving entity of the merger transaction; and that this act is immediately necessary because it is critical that the provisions of this act become effective as soon as possible to encourage efficiency and regulatory costs savings to banks and financial institutions operating in Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-48-502. Merger or conversion of state bank into national bank.

(a) Subject to the provisions of this subchapter and provided that no Arkansas bank which is a party to the merger has a de novo charter, a state bank may merge into a national bank, including a national bank with a home state other than Arkansas.

(b) The action to be taken by a merging or converting state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks, at the time of the action, by the laws of the United States, and not by the law of this state, except that:

(1) The assenting vote of the holders of a simple majority of each class of voting stock of a state bank shall be required for the merger or conversion;

(2) Upon the merger of a state bank into a national bank, the stockholders of the state bank shall have dissenters' rights; and

(3) If the national bank is an out-of-state bank, then § 23-48-902 et seq. shall be applicable to the merger.

(c)(1) Approval by the Bank Commissioner or any other state authority is not necessary for a state bank to convert or merge into a resulting national bank as provided by federal law.

(2)(A) However, within ten (10) days following the effective date of the merger or conversion, the resulting bank shall be required to file in the office of the commissioner, a complete copy of the articles of merger or conversion.

(B) The copy of the articles of merger or conversion shall be certified by the president or chief executive officer or a vice president of the resulting bank.

(d) Upon the completion of the merger or conversion, the charter of any merging or converting state bank shall automatically terminate.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 13; 2017, No. 198, § 10.

Amendments. The 2017 amendment substituted "Approval by the Bank Commissioner or any other state authority is not" for "No approval by the Bank Commissioner or by any other state authority shall be" in (c)(1); redesignated former (c)(2) as (c)(2)(A) and (B); and, in (c)(2)(B), substituted "The copy of the articles of merger or conversion shall" for "This copy must" and inserted "or chief executive officer".

23-48-503. Merger of bank, bank holding company, or savings and loan association into state bank.

(a)(1)(A) With the approval of the Bank Commissioner and the State Banking Board and after a public hearing as prescribed by the applicable law of this state, any bank, bank holding company, or savings and loan association, including an out-of-state bank, bank holding company, or savings and loan association, may be merged with a state bank creating one (1) or more resulting banks.

(B) However, if any national bank, out-of-state bank, bank holding company, or savings and loan association is involved in the merger

under subdivision (a)(1)(A) of this section, there shall be compliance with the requirements of the state or federal laws applicable to the national bank, out-of-state bank, bank holding company, or savings and loan association.

(2)(A) A plan of merger involving a state bank shall provide:

(i) The name of each party to the merger;

(ii) The name of each entity that will result from the merger; and

(iii) The terms and conditions of the merger.

(B) If more than one (1) bank, out-of-state bank, or savings and loan association will result or be created by the terms of the plan of merger, the terms and conditions of the merger shall include:

(i) The manner and basis of allocating and vesting the assets from the merger among one (1) or more of the parties;

(ii) The name of the party that will be obligated to pay the fair value of any shares of stock of a bank that is a party to the merger that are held by a shareholder that has complied with the requirements of § 23-48-506 for the recovery of the fair value of the shareholder's shares; and

(iii) Either of the following:

(a) The manner and basis of allocating the liabilities and obligations of each bank, out-of-state bank, bank holding company, or savings and loan association that is a party to the merger among one (1) or more of the parties; or

(b) Adequate provision for the payment and discharge of the liabilities and obligations of each bank, out-of-state bank, bank holding company, or savings and loan association that is a party to the merger among one (1) or more of the parties.

(3) A bank, including an out-of-state bank, a bank holding company, or a savings and loan association may merge into a state bank if none of the Arkansas banks that are parties to the merger have a de novo charter.

(4)(A) The applicant shall file an application with the commissioner containing the information that the commissioner requires.

(B) If an out-of-state bank is a party to the merger, all applicable provisions of § 23-48-902 et seq. and the applicable law of the home state of the merging bank shall be satisfied.

(5)(A) Unless otherwise provided for by the charter or governing law of any out-of-state bank, bank holding company, or savings and loan association, the assenting vote of a simple majority of each class of voting stock of the merging banks, bank holding companies, or savings and loan associations and the resulting bank shall be required for the merger.

(B) However, a vote of the shareholders of the resulting bank shall not be required if the number of shares to be issued in connection with the merger does not exceed twenty percent (20%) of the outstanding shares of the resulting bank before the merger.

(b) The commissioner shall provide the board with the results of the investigation of the application.

(c) The commissioner shall approve the application if at the hearing both the commissioner and the board find that:

(1) The proposed merger provides adequate capital structure;

(2) The terms of the merger agreement are fair;

(3) The merger is not contrary to the public interest;

(4) The proposed merger adequately provides for dissenters' rights; and

(5) The requirements of all applicable state and federal laws have been complied with.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 14; 2007, No. 170, § 2; 2009, No. 164, § 12; 2017, No. 548, § 10.

Amendments. The 2017 amendment inserted "bank holding company" throughout (a)(1)(B) through (a)(3); in (a)(1)(A), substituted "bank holding company" for "including an out-of-state bank upon compliance with § 23-48-901 et seq." and inserted "including an out-of-state bank, bank holding company, or savings and loan association"; in (a)(2)(B)(ii), substituted "shareholder" for "stockholder" and "shareholder's" for "stockholder's"; in (a)(5)(A), added "Unless otherwise provided for by the charter or governing law of any out-of-state bank, bank holding company, or savings and loan association" and inserted "bank holding companies, or savings and loan associations"; and made stylistic changes.

23-48-504. Conversion of national bank or savings and loan association into state bank.

(a) A national bank or savings and loan association having its main office in this state which follows the procedure prescribed by applicable federal or other law may convert into a state bank and may be granted a charter by the State Banking Board with the concurrence of the Bank Commissioner.

(b) The national bank or savings and loan association may apply for a state charter by filing with the commissioner an application containing the information that the commissioner may require along with a certificate signed by its president or chief executive officer or a vice president stating the action taken in compliance with the provisions of the applicable laws, accompanied by the articles of incorporation approved by a majority vote of the stockholders for the governance of the applicant as a state bank.

(c) The public hearing at which the issuance of the state charter is authorized shall be called by the commissioner:

(1) On not less than fourteen (14) days' written notice to the applicant and to each member of the board; and

(2) Upon publication in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation, at least fourteen (14) days before the hearing, the publication to show the time, place, and purpose of the hearing.

(d) If, at the hearing, both the commissioner and the board find that the proposed state bank meets the standards as to location of offices, capital structure, and character of officers and directors required for the incorporation of a state bank, they shall grant the application for conversion.

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 11.

Amendments. The 2017 amendment substituted "president or chief executive officer or a vice president stating" for "president or a vice president setting forth" in (b).

23-48-506. Dissenting stockholders.

CASE NOTES

Reviewability.

Minority shareholders' contention that the State Banking Board's notice of a general hearing on a proposed merger was constitutionally deficient failed where the minority shareholders were timely informed of all public and private avenues to challenge the bank's valuation of their shares and the hearing did not implicate the minority shareholders in any special way that required more than newspaper announcements. Booth v. Franks, 2017 Ark. 193, 519 S.W.3d 696 (2017).

Minority shareholders' failure to file a written protest within the time period required by § 23-46-406 prevented them from making arguments before the State Banking Board, and therefore their arguments concerning the bank merger were not preserved for review. Booth v. Franks, 2017 Ark. 193, 519 S.W.3d 696 (2017).

23-48-509. Merger of wholly owned Arkansas bank holding company into state bank.

(a) With the approval of the Bank Commissioner, any wholly owned Arkansas bank holding company that owns all of the outstanding shares of each class of the capital stock of a subsidiary state bank may be merged into the bank to result in a state bank without the approval of the shareholders of either the wholly owned Arkansas bank holding company or the state bank, provided that the merger otherwise complies with the then-applicable law of this state.

(b) The board of directors of the wholly owned Arkansas bank holding company and the board of directors of the state bank shall adopt a plan of merger that sets forth:

(1) The names of the wholly owned Arkansas bank holding company and state bank; and

(2) The manner and basis of converting the shares of the wholly owned Arkansas bank holding company into shares of the state bank.

(c) The articles of merger containing the plan of merger, signed by each constituent corporation by its president or chief executive officer or a vice president, shall be filed with the commissioner in the manner required by law for the merger of state banks, and after the commissioner's approval, with the Secretary of State in the manner required by law for the merger of business corporations.

(d) The articles of merger shall become effective upon the filing of the articles with the Secretary of State and, not more than sixty (60) days after the approval of the articles by the commissioner, as may be specified in the articles as the time when the merger shall become effective.

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 12.

Amendments. The 2017 amendment inserted "or chief executive officer" in (c).

Subchapter 6 — Reorganization Through Plan of Exchange

SECTION.
23-48-602. Procedure for adopting and filing plan of exchange.

23-48-602. Procedure for adopting and filing plan of exchange.

(a) The directors, consisting of at least a majority, of a state bank and bank holding company who desire to adopt a plan of exchange pursuant to this subchapter shall adopt a plan of exchange, signed by them under their respective corporate seals, which shall prescribe and set forth:

(1) The terms and conditions of the plan of exchange;

(2) The mode of carrying it into effect;

(3) Provisions with respect to abandonment;

(4) The effective date of the exchange of shares or the method of determination thereof;

(5) The manner and basis of any cash payment or issuance or exchange of shares of stock or other securities of the bank holding company for shares of the state bank; and

(6) Such other details and provisions as are deemed necessary or desirable.

(b)(1) The plan of exchange shall be submitted to the stockholders of the state bank to be acquired at a meeting thereof called for that purpose.

(2) Notice shall be given of the time, place, and purpose of the meeting to each stockholder or member of record, whether entitled to vote or not.

(3) A copy of any proxy statement or other solicitation materials provided to the shareholders of the state bank shall be filed with the Bank Commissioner on or before delivery to the shareholders.

(4)(A) At the meeting, the plan of exchange shall be considered by the stockholders entitled to vote thereon.

(B) A vote by ballot, in person or by proxy, shall be taken for the adoption or rejection of the plan.

(C) Unless otherwise provided in the state bank's articles of incorporation for voting on a plan of exchange, the plan of exchange shall be approved upon receiving the affirmative vote of the holders of at least a simple majority of the outstanding shares of the state bank entitled to vote thereon.

(D) However, if any class of shares of the state bank is entitled to vote as a class on the plan, the plan of exchange shall be approved upon receiving the affirmative vote of the holders of at least a simple majority of the outstanding shares of each class of shares entitled to vote as a class on the plan and the total outstanding shares entitled to vote on the plan.

(E) If the plan of exchange is approved by the stockholders of the state bank, then that fact shall be certified in the plan by the president or chief executive officer or a vice president of the state bank.

(5) The plan so adopted and certified shall be signed by the president or a vice president of each party to the plan of exchange and acknowledged before an officer authorized by law to take acknowledgment of deeds.

(c) The plan, adopted and certified as provided in subsection (b) of this section, shall be filed in duplicate originals with the Bank Commissioner prior to the hearing on the plan and within ten (10) days following the approval of stockholders and, after approval thereof by the commissioner as provided in § 23-48-601, shall be taken and deemed to be the plan of exchange of the parties thereto.

(d) Any plan of exchange may be abandoned in conformity with the terms thereof as approved by the commissioner provided, in that event, due notice of abandonment shall be forthwith transmitted to the stockholders of the state bank, and to the secretary of the bank holding company which are parties thereto, within ten (10) days of the abandonment in a manner and form prescribed or approved by the commissioner.

History. Acts 1997, No. 89, § 1; 2001, No. 65, § 2; 2017, No. 198, § 13.

Amendments. The 2017 amendment inserted "or chief executive officer" in (b)(4)(E).

Subchapter 7 — Branch Offices

23-48-701. Definitions.

As used in this subchapter:

(1)(A) "Full service branch" means a banking facility separate from the main office of the bank at which all lawful banking activities may be conducted as fully as in the main office.

(B) "Full service branch" includes a mobile facility that:

(i) Conducts banking business within the same county as the main office or another full service branch of the bank;

(ii) Does not have a single, permanent site;

(iii) Does not remain within five (5) miles of any banking location for more than two (2) business days;

(iv) Travels to various locations within the county to enable customers to conduct banking business; and

(v) Maintains a log of operations indicating the date and specific location of each stop;

(2) "Healthy bank" means a state bank whose financial condition satisfies the criteria established by State Bank Department rule; and

(3) "Supervisory banking authority" means the Bank Commissioner for state banks and the United States Comptroller of the Currency for national banks.

History. Acts 1997, No. 89, § 1; 2005, No. 1816, § 1; 2007, No. 42, § 1; 2019, No. 315, § 2549.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (2).

23-48-702. Establishment of full-service branches and limited-purpose offices — Locations.

(a)(1) No bank shall engage in core banking activities, receiving deposits, paying checks, or lending money at any location other than at a main banking office or full-service branch, except as otherwise permitted by law.

(2) Unless otherwise restricted by applicable law, banks may engage in permitted activities other than core banking activities at a main office, any branch, or a limited purpose office.

(3)(A) All communities and banking markets shall be presumed to be suitable for bank branches.

(B) The prior existence of a main or branch office of any bank in a community does not grant the bank any right or power to preclude any other bank from branching into the community.

(b)(1)(A) An Arkansas bank may establish a full-service branch anywhere within the United States with the approval of its supervisory banking authority.

(B) A state bank that relocates its main banking office may continue to use its former main banking office location as a full-service branch as long as the use of the banking facility is uninterrupted.

(2) A registered out-of-state bank may establish a full-service branch anywhere within the State of Arkansas:

(A) With the approval of its bank supervisory agencies; and

(B) Upon receiving a certificate of authority from the Bank Commissioner.

(3) An Arkansas bank possessing a capital and surplus of one million dollars ($1,000,000) or more may file an application with the commissioner for permission to exercise, upon such conditions as the commissioner may prescribe, the power to establish branches in foreign countries or dependencies or insular possessions of the United States and to act as fiscal agent for any government entity.

(4) Notwithstanding any other provisions of state law regarding locations of full-service branches, a federal or state savings bank or association chartered and in operation before August 13, 2001, with branches in operation in one (1) or more states, may convert to a state bank in accordance with § 23-48-504 and may retain its branches, both in state and out of state, as branches of the state bank.

(c)(1) None of the provisions of this section which restrict the locations in which full-service branches may be established shall be

effective in emergency instances in which the purchase or assumption of the assets and liabilities of a failed bank becomes necessary due to state or federal regulatory action.

(2) The restrictions on the location of banking services by an authorized bank may be suspended by the commissioner during a disaster, emergency, or other cause which disables the operation of a permanent location of the bank under the terms and conditions considered appropriate by the commissioner.

(d)(1) Any state bank may file a notice with the commissioner to relocate any existing full-service branch to another location then authorized by law.

(2) A fee of not less than three hundred dollars ($300) nor more than five hundred dollars ($500) established by State Bank Department rule shall accompany the notice.

(3) The notice shall:

(A) Be filed not less than thirty (30) days prior to the proposed relocation; and

(B) Contain any information concerning the new location required by the commissioner.

(4) The commissioner shall approve the relocation unless it is determined that the relocation is not consistent with the standards contained in § 23-48-703(a).

(5)(A) No notice to relocate a full-service branch is required if:

(i)*(a)* A full-service branch is:

(1) Opened or built within the immediate neighborhood of an existing branch; or

(2) Opened, built, or established as a result of the consolidation of two (2) or more banks within the immediate neighborhood of an existing branch or main office of a bank.

(b) The existing branch or main office may be closed upon the opening of the new branch;

(ii) The nature of the business and customers of the branch are not substantially affected; and

(iii) A notice and filing fee of no more than two hundred fifty dollars ($250) as prescribed by the commissioner is filed with the department.

(B) As used in subdivision (d)(5)(A) of this section, "within the immediate neighborhood" includes, but is not limited to:

(i) Across the street;

(ii) Around the corner;

(iii) Within two (2) blocks;

(iv) Within one thousand feet (1,000'); or

(v) In densely populated areas, within five thousand feet (5,000').

(e)(1) Any bank may establish a limited-purpose office anywhere in the state to conduct noncore banking activities upon satisfaction of the notice requirement set forth in this subsection.

(2) As to each limited-purpose office which a bank proposes to establish or use, the bank shall give not fewer than thirty (30) days'

prior written notice of its intention to establish or use the limited-purpose office to:

(A) The commissioner, in the case of a state bank;

(B) The home state regulator, in the case of a registered out-of-state bank which is an out-of-state state-chartered bank; or

(C) The United States Comptroller of the Currency, in the case of a national bank.

(3) The notice shall be in such form that may be required by the regulatory authority with which the notice is to be filed and shall include the following information:

(A) The location and a general description of the surrounding area;

(B) Whether the location will be owned or leased;

(C) The noncore banking activities to be conducted;

(D) An estimate of the initial cost of the limited-purpose office; and

(E) Such other relevant information as may be required by the regulatory authority.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 16; 1999, No. 113, § 6; 2001, No. 62, §§ 3, 4; 2005, No. 249, § 1; 2005, No. 1816, § 2; 2007, No. 42, § 2; 2011, No. 796, § 1; 2019, No. 315, § 2550.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (d)(2).

23-48-703. Establishment of full-service branch — Standards and procedure.

(a) The Bank Commissioner shall have the authority to approve the application of a state bank to establish a full-service branch if the commissioner determines that the establishment of the full-service branch is consistent with:

(1) Maintaining a sound banking system;

(2) Encouraging the bank to help meet the credit needs of the community;

(3) Relying on the marketplace as generally the best regulator of economic activity; and

(4) Encouraging healthy competition to promote efficiency and better service to customers.

(b) The sponsor of a full-service branch application may file an application with the commissioner by:

(1) Paying a filing fee established by State Bank Department rule of not less than three hundred dollars ($300) nor more than five hundred dollars ($500); and

(2) Not less than thirty (30) days prior to filing the application, publishing notice of the application one (1) time per week for four (4) consecutive weeks in a newspaper of statewide circulation.

(c) The commissioner:

(1) May establish by rule an expedited application process and procedure for the approval of a healthy bank full-service branch application; and

(2) Shall approve a healthy bank full-service branch application unless the commissioner determines that approving the application is not consistent with the standards provided in subsection (a) of this section.

(d)(1) The commissioner shall give notice of the filing of an application under subsection (b) or subsection (c) of this section to all Arkansas state-chartered banks with a bank or a full service branch currently open and operating within the market area of the proposed new branch.

(2) The procedure for giving notice and the parameters of the market area shall be established by department rule.

(e)(1) A written protest to a full-service branch application may be filed with the commissioner within fifteen (15) days of the filing of the application.

(2) The protest shall include:

(A) A detailed explanation of the protesting party's reasons why the commissioner should deny the application; and

(B) A filing fee established by department rule of not less than three hundred dollars ($300) nor more than five hundred dollars ($500).

(f) The commissioner may conduct an adjudicatory or administrative hearing on a full-service branch application.

(g)(1) The commissioner shall issue an order accepting or rejecting a full-service branch application within a reasonable period of time following the expiration of the fifteen-day protest period under subdivision (e)(1) of this section.

(2) The order shall include specific findings of fact and conclusions of law concerning whether the establishment of the full-service branch is consistent with the standards provided in subsection (a) of this section.

(h) Within thirty (30) days after the commissioner issues an order accepting or rejecting a full-service branch application, an applicant or a party that filed a protest to the full-service branch application may appeal the commissioner's order to the circuit court of the county where the full-service branch will be established.

History. Acts 1997, No. 89, § 1; 1999, No. 113, § 7; 2007, No. 42, § 3; 2019, No. 315, § 2551.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (b)(1), (c)(1), (d)(2), and (e)(2)(B).

Subchapter 8 — Customer-Bank Communication Terminals

SECTION.

Effective Dates. Acts 2013, No. 153, § 2: Feb. 26, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that out-of-state banks have and will have an unfair competitive advantage over Arkansas banks located out-of-state that are subject to the state's terminal

usage fee limits; that out of state banks will continue to have an unfair competitive advantage over Arkansas banks located out of state until the limitation is removed; and that this act is immediately necessary to remove the limitation to allow Arkansas banks located out of state to change their rates to the maximum usage fee authorized by the state where the Arkansas bank is located. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-48-810. Sharing of communication terminals — Definitions.

(a)(1) An agreement to share a customer-bank communication terminal shall not prohibit, limit, or restrict the right of a bank from charging a customer-bank communication terminal usage fee.

(2) The usage fee may be imposed only if imposition of the usage fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the usage fee.

(b)(1) For purposes of this section, "usage fee" is a fee charged by a customer-bank communication terminal owner on transactions by a holder of a foreign bank card.

(2) For purposes of this section, a "foreign bank card" is a card eligible for use in a customer-bank communication terminal, which card is not issued by the customer-bank communication terminal owner.

History. Acts 1997, No. 89, § 1; 2013, No. 153, § 1; 2015, No. 588, § 2.

A.C.R.C. Notes. Acts 2015, No. 588, § 1, provided: "Findings and legislative intent.

"(a) The General Assembly finds that:

"(1) A state-chartered bank in Arkansas is prohibited from charging a usage fee at a customer-bank communication terminal in excess of two dollars ($2.00) or two percent (2%) of the gross amount of the transaction;

"(2) An out-of-state bank is not subject to Arkansas's terminal usage fee limits and therefore enjoys an unfair competitive advantage over a state-chartered bank in Arkansas; and

"(3) A state-chartered bank in Arkansas will be able to compete on a level playing field with an out-of-state bank if allowed to charge an appropriate amount for a usage fee at a customer-bank communication terminal.

"(b) It is the intent of the General Assembly to allow a state chartered bank in Arkansas to charge an appropriate and competitive usage fee at a customer-bank communication terminal to the same extent as the state chartered banks' out-of-state competitors."

Subchapter 9 — Interstate Bank Mergers and Branching

23-48-906. Powers — Additional branches.

(a) An out-of-state state-chartered bank which establishes and maintains one (1) or more branches in Arkansas under this subchapter may conduct any activities at such branch or branches which are authorized under the laws of Arkansas for state banks.

(b) A state bank may conduct any activities at any branch outside Arkansas which are permissible for a bank chartered by the host state in which the branch is located, provided that the Bank Commissioner may prohibit any state bank from engaging in any activity not expressly allowed by the Arkansas Banking Code of 1997 if the commissioner determines, by order or rule, that the involvement of out-of-state branches of state banks in such activities would threaten the safety or soundness of state banks.

History. Acts 1997, No. 408, § 20; 2011, No. 796, § 4; 2019, No. 315, § 2552.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (b).

23-48-907. Examinations — Periodic reports — Cooperative agreements — Fees.

(a) To the extent consistent with subsection (c) of this section, the Bank Commissioner may make such examinations of any branch established and maintained in Arkansas pursuant to this subchapter by an out-of-state state-chartered bank as the commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of the Arkansas Banking Code of 1997 shall apply to such examinations.

(b)(1) The commissioner may prescribe requirements for periodic reports regarding any registered out-of-state bank that operates a branch in Arkansas. The required reports shall be provided by the bank.

(2) Any reporting requirements prescribed by the commissioner under this subsection shall be consistent with the reporting requirements applicable to state banks and appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this subchapter.

(c) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Arkansas of an out-of-state state-chartered bank, or any branch of a state bank in any host state, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state bank or an out-of-state state-chartered bank operating a branch in this state

pursuant to this subchapter to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract under § 19-11-232.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Arkansas of an out-of-state state-chartered bank or any branch of a state bank in any host state, provided that the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this subchapter or to ensure compliance with the laws of this state, but provided further, that, in the case of an out-of-state state-chartered bank, the commissioner shall recognize the exclusive authority of the home-state regulator over corporate governance matters and the primary responsibility of the home-state regulator with respect to safety and soundness matters.

(f)(1) Each out-of-state state-chartered bank that maintains one (1) or more branches in Arkansas may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the Arkansas Banking Code of 1997 and rules of the commissioner.

(2) The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between the parties and the commissioner.

History. Acts 1997, No. 408, § 20; 2019, No. 315, § 2553.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (f)(1).

23-48-909. Rules.

The Bank Commissioner, with the approval of the State Banking Board, may promulgate rules that he or she determines to be necessary or appropriate in order to implement the provisions of this subchapter.

History. Acts 1997, No. 408, § 20; 2019, No. 315, § 2554.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the section heading and in the text.

Subchapter 10 — Registration of Out-of-State Banks

SECTION.
23-48-1009. Grounds for revocation

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021."

Acts 2021, No. 523, § 26: Apr. 1, 2021. Effective date clause provided: "It is found and determined by the General Assembly that Acts 2019, No. 819 transferred collection and administration of corporate franchise tax from the Secretary of State to the Department of Finance and Administration; that this transfer has created hardships and compliance issues for Arkansas taxpayers; that these issues necessitate the immediate return of the collection and administration of the franchise tax back to the Secretary of State; that Acts 2019, No. 819 will take effect on May 1, 2021; and that the immediate return of the franchise tax collection responsibilities to the Secretary of State will prevent further tax compliance issues for Arkansas taxpayers. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor. (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-48-1009. Grounds for revocation

The Bank Commissioner may commence a proceeding under § 23-48-1010 to revoke the certificate of authority of a registered out-of-state bank if:

(1) The out-of-state bank does not deliver its annual franchise tax report to the Secretary of State within sixty (60) days after it is due;

(2) The out-of-state bank does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) The out-of-state bank is without a registered agent or registered office in this state for sixty (60) days or more;

(4) The out-of-state bank does not inform the commissioner under § 23-48-1005 or § 23-48-1006 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance;

(5) The out-of-state bank or an officer, director, or employee thereof is found to be violating federal banking laws or regulations, violating the banking laws of this state or department rules, violating any regulatory agreement, or jeopardizing the safety and soundness of the out-of-state bank;

(6) An incorporator, director, officer, or agent of the out-of-state bank signed a document he or she knew was false in any material respect with intent that the document be delivered to the commissioner for filing; or

(7) The commissioner receives a duly authenticated certificate from the bank supervisory agency or other official having custody of the corporate records of banking institutions in the state or country under whose law the out-of-state bank is chartered stating that it has been dissolved or disappeared as the result of a merger.

History. Acts 1997, No. 408, § 20; 2019, No. 315, § 2555; 2019, No. 819, § 13; 2021, No. 523, § 12.

A.C.R.C. Notes. Acts 2019, No. 819, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Tax Reform Act of 2019'."

Acts 2019, No. 819, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Arkansas Tax Reform and Relief Legislative Task Force was charged with:

"(A) Examining and identifying areas of potential tax reform within the tax laws; and

"(B) Recommending legislation to the General Assembly, in part, to modernize and simplify the Arkansas tax code and ensure fairness to all taxpayers;

"(2) There are several areas of the tax code that should be amended to reform the state's tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(3) Any savings realized by the state through tax reforms should be dedicated to reducing the tax burden for Arkansas taxpayers.

"(b) It is the intent of the General Assembly to:

"(1) Reform Arkansas tax laws to modernize and simplify the tax code and ensure fairness to all taxpayers; and

"(2) Offset any revenue savings realized through tax reform with corresponding changes to reduce the tax burden for Arkansas taxpayers."

Acts 2021, No. 523, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Acts 2019, No. 819 will transfer responsibility for franchise tax collection and administration from the Secretary of State to the Department of Finance and Administration on May 1, 2021;

"(2) In an effort to achieve a more seamless transition, the department began collecting and administering the franchise tax on January 1, 2021, under a Memorandum of Understanding with the Secretary of State;

"(3) The transfer of franchise tax collection and administration has negatively impacted Arkansas taxpayers as they seek to comply with their franchise tax obligations; and

"(4) Unless franchise tax collection and administration responsibilities are immediately transferred from department back to the Secretary of State, Arkansas taxpayers will face significant difficulties as they seek to comply with Arkansas franchise tax laws.

"(b) It is the intent of the General Assembly:

(1) To reverse the effects of certain provisions in Acts 2019, No. 819 by transferring the administration and collection of the franchise tax from the department back to the Secretary of State;

"(2) That the Secretary of State should continue to administer the collection of franchise tax; and

"(3) To accomplish this transfer in a manner that results in minimal impact to Arkansas taxpayers."

Publisher's Notes. Acts 2021, No. 523, § 12, effective April 1, 2021, specifically amended this section as amended by Acts 2019, No. 819, § 13, and effective on and after May 1, 2021.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (5).

The 2019 amendment by No. 819 substituted "Department of Finance and Administration" for "Secretary of State" in (1).

The 2021 amendment substituted "Secretary of State" for "Department of Finance and Administration" in (1).

Effective Dates. Acts 2019, No. 819, § 26(a): May 1, 2021. Effective date clause provided: "Sections 3-17 and 20-24 of this act are effective on and after May 1, 2021."

CHAPTER 49

DISSOLUTION AND LIQUIDATION

23-49-102. Department taking possession — Procedure.

(a) In addition to the powers conferred upon the Bank Commissioner and the State Bank Department, the commissioner may take possession of the business and property of any institution which the commissioner supervises whenever it appears to the commissioner that the institution:

(1) Is insolvent or in imminent danger of insolvency;

(2) Is in an unsafe or unsound condition;

(3) Has refused to pay its deposits or obligations in accordance with the terms under which those deposits or obligations were incurred;

(4) Has concealed or refused to submit books, papers, records, or affairs of the institution for inspection to any examiner or to any lawful agent of the appropriate federal financial institution regulatory agency or of the department;

(5) Has substantially dissipated assets or earnings due to:

(A) Any violation of any law or rule; or

(B) An unsafe or unsound practice;

(6) Has requested through its board of directors that the department take possession for the benefit of depositors, other creditors, shareholders, or other persons;

(7) Has an impairment of its capital as is currently required to be maintained by the department;

(8) Has neglected or refused, for a period of at least thirty (30) days, to comply with the terms of a final order of the department or final order of a federal financial institution's regulatory agency essential to preserve the solvency of the institution; or

(9) Has failed to pay the fees charged by the department under § 23-46-509 after due notice of the amount of the fee has been given.

(b) Whenever it appears to the department that any one (1) or more of the conditions in subsection (a) of this section exists as to any institution, the department shall cause a certified notice to be served on the president or other executive officer actively in charge of the institution and demand possession of the business, property, and records of the institution from the officer citing the reasons for such a demand from subsection (a) of this section. The institution shall immediately surrender the possession to the commissioner.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2556.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a)(5)(A).

23-49-118. Execution and filing of articles with department — Certificate of dissolution.

(a) The articles of dissolution shall be executed in duplicate and presented in duplicate to the State Bank Department accompanied by fees prescribed by department rules.

(b)(1) Upon presentation of the articles of dissolution, the Bank Commissioner shall endorse his or her approval upon each of the

duplicate copies of the articles if he or she finds that they conform to law.

(2) When all fees have been paid as required by law, the commissioner shall file one (1) copy of the articles in the department and issue two (2) certificates of dissolution. One (1) certificate of dissolution shall be filed with the department and the second shall be delivered to the receiver.

(c) Upon the issuance of the certificate of dissolution, the institution shall be dissolved and its existence shall cease.

(d) Upon the issuance of the certificate of dissolution, the receiver shall be authorized, as agent for the directors and shareholders of any subsidiary trust company, to file any and all documents with the Secretary of State necessary to terminate its corporate existence under applicable corporate law.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2557.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a).

23-49-119. Voluntary liquidation.

(a)(1) An application for approval to voluntarily liquidate the affairs of an institution shall be submitted to the Bank Commissioner in the manner and form that the commissioner may prescribe, shall include the information set forth in subsection (b) of this section, and shall contain such additional information which the commissioner may require.

(2) The application shall include duplicate copies of a resolution authorizing the dissolution and duplicate copies of a certificate, verified by the applicant's president or chief executive officer or a vice president, stating the facts pertaining to the resolution and that the applicant's liabilities have been paid in full.

(b) Each duplicate certificate shall have annexed thereto, over the official signatures, evidence showing:

(1) The date on which the resolution was authorized by the affirmative vote of the holders of at least a simple majority of the outstanding shares entitled to vote thereon;

(2) The number of shares of each class entitled to vote on the resolution which were outstanding on the date of the stockholders' meeting;

(3) The number of shares of each class entitled to vote on the resolution whose owners were present in person or by proxy;

(4) The number of shares of each class voted for and against the resolution; and

(5) The manner in which the meeting was called and the time and manner of giving notice, with a certification that the meeting was lawfully called and held.

(c)(1) Upon receipt of the application, the commissioner shall investigate its merits.

(2) If the commissioner is satisfied that the application is complete and that all applicable provisions of law have been complied with, he or

she shall cause an examination to be made of the applicant institution for the purpose of verifying the payment of all of its liabilities.

(3) If the examination satisfies the commissioner that all of the applicant's liabilities have been paid, he or she shall endorse one (1) copy of the certificate with his or her statement that the institution is voluntarily liquidating.

(d) The return of the endorsed copy of the certificate shall operate to free the institution from further examination and to authorize it, under its original corporate name, to sue and be sued, to execute conveyances and other instruments, to take, hold, and own property, and to do all such other things as may be necessary to realize upon its remaining assets for the pro rata benefit of its stockholders, but not to engage or continue in any new or other business under its charter or otherwise.

(e) The liquidation shall proceed as expeditiously as possible, and at the conclusion thereof, the institution shall surrender its charter.

(f) In lieu of continuing the liquidation under the original corporate name, the institution may transfer the remaining assets to a trustee agreed upon by the stockholders by a majority vote and shall thereupon surrender its charter.

(g) Each application for approval of a voluntary dissolution shall be accompanied by a fee as shall be set by State Bank Department rules and shall be paid to the department.

History. Acts 1997, No. 89, § 1; 2017, No. 198, § 14; 2019, No. 315, § 2558.

Amendments. The 2017 amendment, in (a)(2), inserted "or chief executive officer", substituted "stating" for "setting forth", and substituted "that" for "also that all of".

The 2019 amendment substituted "rules" for "regulations" in (g).

CHAPTER 50

MISCELLANEOUS VIOLATIONS OF BANKING LAWS

23-50-101. Prosecution of violations — Nonliability of commissioner.

(a) The Bank Commissioner may initiate any appropriate civil or administrative action or remedy upon discovering a violation of the Arkansas Banking Code of 1997 or any other statute or rule the enforcement of which is within the scope of his or her duty.

(b) Civil, administrative, or criminal actions initiated by the commissioner under this section which expose him or her or his or her estate to personal liability for damages, or otherwise, shall be defended by the State of Arkansas, and judgments, if any shall be obtained against him or her or his or her estate, shall be borne by the State of Arkansas.

(c) No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith reliance upon an order or rule of the State Bank Department notwithstanding a subsequent decision by a court invalidating the order or rule.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2559.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a), and twice in (c).

23-50-102. Forfeiture of charter.

(a)(1) If the directors of any institution under the supervision of the State Bank Department shall knowingly violate or knowingly permit any of its officers, agents, or servants to violate any of the laws enacted for the rule of any such institutions or any department rules, all rights, privileges, and franchises of the institution shall be subject to forfeiture.

(2)(A) Any violation shall, however, be determined in the first instance by the Bank Commissioner, after notice to the institution of not less than five (5) days, and after hearing thereon, and subject to appeal by the institution to the circuit court of the county wherein the institution has its main office.

(B) Any appeal shall be cognizable and subject to hearing by the circuit court, either in term time or in vacation, at chambers, upon five (5) days' notice of the taking of the appeal and of the time and place for the hearing.

(b)(1) Upon rendition of any decision adverse to any institution, the commissioner shall be authorized, in his or her discretion, to take charge of the institution and manage and supervise the business thereof, pending any appeal that may be taken from the decision or orders.

(2) Upon affirmance by the circuit court of the decision or orders appealed from, the commissioner shall be authorized to continue supervision, or to suspend the charter, of the institution, pending compliance with the decision or orders.

(3) If the decision or orders are not complied with in the case of a state bank or subsidiary trust company within a reasonable time to be fixed by the commissioner, the department shall proceed to liquidate the business and assets of the state bank or subsidiary trust company in the same manner as is provided in the case of insolvent state banks.

History. Acts 1997, No. 89, § 1; 2019, No. 315, § 2560.

Amendments. The 2019 amendment, in (a)(1), substituted "rule" for "regulation" and "rules" for "regulations".

CHAPTER 51

ARKANSAS TRUST INSTITUTIONS ACT

23-51-102. Certain definitions.

(a) For the purposes of this chapter:

(1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity;

(2) "Act as a fiduciary" or "acting as a fiduciary" means to:

(A) Accept or execute trusts, including to:

(i) Act as trustee under a written agreement;

(ii) Receive money or other property in its capacity as trustee for investment in real or personal property;

(iii) Act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;

(iv) Act as trustee of the estate of a deceased person; or

(v) Act as trustee for a minor or incapacitated person;

(B) Administer in any other fiduciary capacity real or tangible personal property; or

(C) Act pursuant to an order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person;

(3) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep or otherwise manage the property;

(4) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company;

(5) "Authorized trust institutions" means any state trust company, subsidiary trust company, or trust office of a trust institution located in Arkansas;

(6) "Bank" means a state bank, national bank, any bank chartered by any state of the United States or any foreign bank organized under the laws of a territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa or the United States Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(7) "Bank supervisory agency" means:

(A) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(B) The United States Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision [abolished] and any successor to these agencies;

(8) "Branch" with respect to a depository institution has the meaning set forth in § 23-48-702;

(9) "Capital" means:

(A) The sum of:

(i) The par value of all shares of the state trust company having a par value that have been issued;

(ii) The consideration fixed by the board in the manner provided by the Arkansas Business Corporation Act, § 4-27-101 et seq., for all shares of the state trust company without par value that have been issued, except a part of that consideration that:

(a) Has been actually received;

(b) Is less than all of that consideration; and

(c) The board, by resolution adopted not later than sixty (60) days after the date of issuance of those shares, has allocated to surplus with the prior approval of the commissioner; and

(iii) An amount not included in subdivisions (a)(9)(A)(i) and (ii) of this section that has been transferred to capital of the state trust

company, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) All amounts otherwise included in subdivisions (a)(9)(A)(i) and (ii) of this section that are attributable to the issuance of securities by the state trust company and that the commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities;

(10) "Capital base" means the sum of capital, surplus, and undivided profits, plus any additions and less any subtractions which the commissioner may by rule prescribe;

(11) "Charter" means a charter, license or other authority issued by the commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state;

(12) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the non-contingent beneficiaries of an account;

(13) "Commissioner" means the Bank Commissioner then in office and, where appropriate, all of his or her successors and predecessors in office;

(14) "Company" includes a bank, trust company, subsidiary trust company, corporation, limited liability company, partnership, association, business trust, foundation, or another trust;

(15) "Control" means:

(A) The ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of a state trust company or other company;

(B) The ability to control the election of a majority of the board of a state trust company or other company; and

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the commissioner after notice and an opportunity for hearing;

(16) "Department" means the State Bank Department;

(17) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. §§ 1813(c)(2) and (3);

(18) "Equity capital" means the amount by which the total assets of a state trust company exceed the total liabilities of the state trust company;

(19) "Equity security" means:

(A) Stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

(B) A certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest;

(C) A security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision (a)(19);

(D) A security carrying a warrant or right to subscribe to or purchase a security described by this subdivision (a)(19); and

(E) A certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision (a)(19) that evidences an existing or contingent equity ownership interest;

(20) "Fiduciary record" means a matter written, transcribed, recorded, received or otherwise in the possession or control of a trust company, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company;

(21) "Hazardous condition" with respect to a trust company means:

(A) A refusal by the trust company to permit examination of its books, papers, accounts, records, or affairs by the commissioner;

(B) Violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the commissioner; or

(C) A circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

(i) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even though the book or fair market value of its assets may exceed its liabilities;

(ii) Has equity capital less than the amount of capital the trust company is required to maintain under § 23-51-110, or the adequacy of its equity capital is threatened, as determined under regulatory accounting principles;

(iii) Has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

(iv) Violates or refuses to comply with this chapter, another statute or rule applicable to trust companies, or any final and enforceable order of the commissioner;

(v) Is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

(vi) Conducts business in an unsafe or unsound manner, which includes, but is not limited to conducting business with:

(a) Inexperienced or inattentive management;

(b) Potentially dangerous operating practices;

(c) Infrequent or inadequate audits;

(d) Administration of assets that is notably deficient in relation to the volume and character or responsibility for asset holdings;

(e) Failure to adhere to sound administrative practices;

(f) Frequent occurrences of violations of laws, rules, or terms of the governing instruments; or

(g) Engaging in self-dealing or evidencing a notable degree of potential or actual conflicts of interest;

(22) "Insider" means:

(A) Each director, officer or principal shareholder of the trust company;

(B) Any company controlled by a person described by subdivision (a)(23)(A) of this section; or

(C) Any person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation;

(23) "Insolvent" means a circumstance or condition in which a state trust company:

(A) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) Has equity capital less than one million dollars ($1,000,000), as determined under regulatory accounting principles;

(C) Fails to maintain deposit insurance with the Federal Deposit Insurance Corporation or its successor if the commissioner determines that deposit insurance is necessary for the safe and sound operation of the state trust company, or maintains adequate security for its deposits in accordance with § 23-51-130;

(D) Sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by §§ 23-51-150 — 23-51-155; or

(E) Attempts to dissolve or liquidate other than as provided by §§ 23-51-156 — 23-51-161;

(24) "Investment security" means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or other debt instrument not otherwise classified as a loan or extension of credit;

(25) "License" means the authority granted by the commissioner pursuant to this chapter to establish, acquire or maintain a trust office;

(26) "Loans and extensions of credit" means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person;

(27) "New trust office" means a trust office located in a host state which:

(A) Is originally established by the trust institution as a trust office; and

(B) Does not become a trust office of the trust institution as a result of:

(i) The acquisition of another trust institution or trust office of another trust institution; or

(ii) A merger, consolidation, or conversion involving any such trust institution or trust office;

(28) "Office" with respect to a trust institution means the principal office, a trust office or a representative trust office, but not a branch;

(29) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company;

(30) "Operating subsidiary" means a company for which a state trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than fifty percent (50%) of the outstanding shares of each class of voting securities or its equivalent of the company;

(31) "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this state;

(32) "Out-of-state trust company" means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state;

(33) "Out-of-state trust institution" means a trust institution that is not a state trust institution;

(34) "Person" means an individual, a company or any other legal entity;

(35) "Principal office" with respect to:

(A) A state trust company, means a location registered with the commissioner as the state trust company's home office at which:

(i) The state trust company does business;

(ii) The state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

(iii) At least one executive officer of the state trust company maintains an office; or

(B) A trust institution other than a state trust company, means its principal place of business in the United States;

(36) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of any class of voting securities of a state trust company or other company;

(37) "Private trust company" means a trust company that does not engage in a trust business with the general public;

(38) "Receiver" means the commissioner, an agent of the commissioner or any federal or other governmental agency exercising the powers and duties of a receiver pursuant to § 23-51-164;

(39) "Savings association" means a depository institution that is neither a bank nor a foreign bank;

(40) "Shareholder" means an owner of a share in a state trust company;

(41) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences;

(42) "State" means any state of the United States, the District of Columbia, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Northern Mariana Islands;

(43) "State bank" means a bank chartered to act as a fiduciary by this state;

(44) "State trust company" means a corporation organized or reorganized under this chapter;

(45) "State trust institution" means a trust institution having its principal office in this state;

(46) "Subsidiary" means a company that is controlled by another person. The term includes a subsidiary of a subsidiary;

(47) "Subsidiary trust company" means a corporation organized under the Arkansas Business Corporation Act, § 4-27-101 et seq. and authorized by the commissioner pursuant to § 23-47-801 et seq. or the Bank Holding Company Subsidiary Trust Company Formation Act of 1989, § 23-32-1901 et seq. [repealed], to conduct trust business and business incidental to trust business in this state, of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company which also owns, directly or indirectly, an affiliated bank, as that term is defined in § 23-47-801 et seq.;

(48) "Surplus" means the amount by which the assets of a state trust company exceeds its liabilities, capital, and undivided profits;

(49) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including but not limited to:

(A) Acting as a fiduciary, or

(B) To the extent not acting as a fiduciary, any of the following:

(i) Receiving for safekeeping personal property of every description;

(ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or

(iii) Acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity;

(50) "Trust company" means a state trust company, subsidiary trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank;

(51) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client;

(52) "Trust institution" means a depository institution, state bank or trust company;

(53) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the commissioner to act as a fiduciary;

(54)(A) "Unauthorized trust activity" means:

(i) A company, other than one identified in § 23-51-165(a), acting as a fiduciary within this state;

(ii) A company engaging in a trust business in this state at any office of the company that is not its principal office, if the company is a state trust institution, or that is not a trust office or a representative trust office of the company; or

(iii) An out-of-state trust institution engaging in a trust business in this state at any time an order issued by the commissioner under § 23-51-182 is in effect.

(B) "Unauthorized trust activity" does not include a foundation serving as a fiduciary;

(55) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger; and

(56) "Voting security" means a share, or other evidence of proprietary interest in a state trust company or other company that has as an attribute the right to vote or participate in the election of the board of the state trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security.

(57)(A) "Foundation" means an organization that:

(i) Is organized and operated for religious, educational, or charitable purposes, as defined in section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), as it existed on January 1, 2019;

(ii) Has equity capital of at least one million dollars ($1,000,000);

(iii) Has fiduciary liability insurance coverage with policy limits of not less than two million dollars ($2,000,000);

(iv) Adopts and maintains written fiduciary policies and procedures;

(v) Has an annual independent audit that covers fiduciary activities and assets; and

(vi)*(a)* Is serving as a fiduciary for a trust or estate whose assets are less than seven hundred fifty thousand dollars ($750,000).

(b) Subdivision (a)(57)(A)(vi)*(a)* of this section does not apply if:

(1) The foundation is the sole remainder beneficiary of the trust or estate; or

(2) The remainder beneficiary is an organization that is supported by the foundation.

(B) "Foundation" does not include a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 509(a).

(b) These definitions shall be liberally construed to accomplish the purposes of this chapter. The commissioner by rule may adopt other definitions to accomplish the purposes of this chapter.

History. Acts 1997, No. 940, § 2; 2019, No. 836, §§ 1-3; 2019, No. 315, §§ 2561-2563.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a)(10), (a)(21)(C)(iv), and (b); and substituted "rules" for "regulations" in (a)(21)(C)(vi)*(f)*.

The 2019 amendment by No. 836 inserted "foundation" in (a)(14); redesignated (a)(54) as (a)(54)(A) and redesignated the remaining subdivisions in (a)(54)(A) accordingly; substituted "the company" for "it" in (a)(54)(A)(ii); added (a)(54)(B) and (a)(57); and made stylistic changes.

23-51-103. Rules.

The Bank Commissioner may promulgate such rules as he or she determines to be necessary or appropriate in order to implement the provisions of this chapter.

History. Acts 1997, No. 940, § 3; 2019, No. 315, § 2564.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the section heading and in the text.

23-51-106. Application for state trust company charter.

(a) An application for a state trust company charter must be made under oath and in the form required by the Bank Commissioner and must be supported by information, data, records, and opinions of counsel that the commissioner requires. The application must be accompanied by a non-refundable filing fee of not less than three thousand dollars ($3,000) nor more than ten thousand dollars ($10,000) as set by rule of the commissioner and proof of escrow of deposit for the required capital.

(b) The commissioner shall grant a state trust company charter only on proof that one or more viable markets exist within or outside of this state that may be served in a profitable manner by the establishment of the proposed state trust company. In making such a determination, the commissioner shall examine the business plan which shall be submitted as part of the application for a state trust company charter and consider:

(1) The market or markets to be served;

(2) Whether the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;

(3) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(4) Whether the proposed officers and directors, as a group, have sufficient fiduciary experience, ability, standing, competence, trustwor-

thiness, and integrity to justify a belief that the proposed state trust company will operate in compliance with law and that success of the proposed state trust company is probable;

(5) Whether each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(6) Whether the organizers are acting in good faith.

(c) The failure of an applicant to furnish required information, data, opinions of counsel, other material or the required fee is considered an abandonment of the application.

History. Acts 1997, No. 940, § 6; 2019, No. 315, § 2565.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a).

23-51-107. Notice and investigation of charter application.

(a) The Bank Commissioner shall notify the organizers when the application is complete and accepted for filing and all required fees and deposits have been paid. Upon filing of an application with the commissioner, the organizers of the proposed state trust company shall give notice of filing through publication by one (1) insertion in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation and shall give written notice of filing through the United States mail to all trust institutions maintaining a principal office or a trust office in the county wherein the principal office of the proposed state trust company is to be located.

(b) At the expense of the organizers, the commissioner shall investigate the application and inquire into the identity and character of each proposed director, officer, and principal shareholder. The commissioner shall prepare a written report of the investigation, and any person may request a copy of the nonconfidential portions of the application and written report as provided by the Freedom of Information Act of 1967, § 25-19-101 et seq. Rules adopted under this chapter may specify the confidential or nonconfidential character of information obtained by the State Bank Department under this section. Except as provided in rules regarding confidential information, the financial statement of a proposed officer, director, or principal shareholder is confidential and not subject to public disclosure.

History. Acts 1997, No. 940, § 7; 2019, No. 315, § 2566.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the third and fourth sentences of (b).

23-51-108. Hearing and decision on charter application.

(a) No person shall appear in opposition to the application unless the person shall have filed a written protest to the granting of the application within thirty (30) days of the date of the notice of the filing

of the application. The protest must state the grounds for objection and must be accompanied by a filing fee of not less than two thousand dollars ($2,000) nor more than five thousand dollars ($5,000) for each protestant, such amount to be set by rule promulgated by the Bank Commissioner.

(b) Once the written report of investigation has been completed, the commissioner shall establish a time for hearing on the charter application.

(c) Notice of the time, place, and purpose of the hearing shall be given at least thirty (30) days before the hearing as follows:

(1) By letter from the commissioner to the organizers of the proposed state trust company and to each trust institution to which the organizers of the application are required to give written notice pursuant to § 23-51-107(a);

(2) By letter from the commissioner to each person who has notified the commissioner of an intention to oppose the application, provided that if a group of persons has protested the application, the notice may be given to one (1) member of the group; and

(3) By release to news media.

(d) If the commissioner sets a hearing, the commissioner shall conduct a public hearing and as many prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable law and rules.

(e) Based on the record of any hearing conducted pursuant to subsection (d) of this section, the commissioner shall determine whether all of the necessary conditions set forth in § 23-51-106(b) have been established and shall enter an order granting or denying the charter. The commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.

History. Acts 1997, No. 940, § 8; 2019, No. 315, §§ 2567, 2568.

Amendments. The 2019 amendment substituted "rule" for "regulation" in the second sentence of (a); and substituted "rules" for "regulations" in (d).

23-51-111. Application of laws relating to general business corporations.

(a) The Arkansas Business Corporation Act, § 4-27-101 et seq., applies to a trust company to the extent not inconsistent with this chapter or the proper business of a trust company, except that any reference to the Secretary of State means the Bank Commissioner unless the context requires otherwise.

(b) Unless expressly authorized by this chapter or a rule of the commissioner, a trust company may not take an action authorized by the Arkansas Business Corporation Act, § 4-27-101 et seq., regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which the Arkansas Business Corporation Act, § 4-27-101 et seq., would require a filing with the Secretary of State if

the trust company were a business corporation, without first submitting the filing to the commissioner for the same purposes for which it otherwise would be required to be submitted to the Secretary of State and compliance with the applicable provisions of this chapter.

(c) The commissioner may adopt rules to limit or refine the applicability of subsection (a) of this section to a trust company or to alter or supplement the procedures and requirements of the Arkansas Business Corporation Act, § 4-27-101 et seq., applicable to an action taken under this chapter.

History. Acts 1997, No. 940, § 11; 2019, No. 315, § 2569.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (b); and substituted "rules" for "regulations" in (c).

23-51-114. Amendment of state trust company articles of association.

(a) A state trust company that has been granted a charter under § 23-51-109 or a predecessor statute may amend or restate its articles of association for any lawful purpose, including the creation of authorized but unissued shares in one or more classes or series.

(b) An amendment authorizing the issuance of shares in series must contain:

(1) The designation of each series and of any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the articles of association; and

(2) A statement of any authority to be vested in the board to establish series and determine the preferences, limitations, and relative rights of each series.

(c) Amendment or restatement of the articles of association of a state trust company and approval of the board and shareholders must be made or obtained in accordance with provisions of the Arkansas Business Corporation Act, § 4-27-101 et seq., for the amendment or restatement of articles of incorporation except as otherwise provided by this chapter or rules adopted under this chapter. The original and one (1) copy of the articles of amendment or restated articles of association must be filed with the Bank Commissioner for approval. Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the amendment or restatement within thirty (30) days after the date the commissioner considers the submission informationally complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement or articles of association under this section.

(d) If the commissioner finds that the amendment or restatement conforms to law and any conditions imposed by the commissioner, and any required filing fee has been paid, the commissioner shall:

(1) Endorse the face of the original and copy with the date of approval and the word "Approved";

(2) File the original in the State Bank Department's records; and

(3) Deliver a certified copy to the amendment or restatement to the state trust company.

(e) An amendment or restatement, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.

History. Acts 1997, No. 940, § 14; 2019, No. 315, § 2570.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the first sentence of (c).

23-51-115. Establishing a series of shares.

(a) If the articles of association expressly give the board authority to establish series and determine the preferences, limitations, and relative rights of each series of shares, the board may do so only on compliance with this section and any rules adopted under this chapter.

(b) A series of shares may be established in the manner provided by the provisions of the Arkansas Business Corporation Act, § 4-27-101 et seq., as if the state trust company were a domestic corporation, but the shares of the series may not be issued and sold except upon compliance with this section. The state trust company shall file the original and one copy of the articles of amendment required by the Arkansas Business Corporation Act, § 4-27-101 et seq., with the Bank Commissioner. Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the series within thirty (30) days after the date the commissioner considers the submission informationally complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) If the commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series otherwise conforms to law and any conditions imposed by the commissioner, and that any required filing fee has been paid, the commissioner shall:

(1) Endorse the face of the original and copy of the statement with the date of approval and the word "Approved";

(2) File the original in the State Bank Department's records; and

(3) Deliver a certified copy of the statement to the state trust company.

History. Acts 1997, No. 940, § 15; 2019, No. 315, § 2571.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a).

23-51-116. Change in outstanding capital and surplus.

(a) A state trust company may not reduce or increase its outstanding capital through dividend, redemption, issuance of shares or otherwise, without the prior approval of the Bank Commissioner, except as permitted by this section or rules adopted under this chapter.

(b) Unless otherwise restricted by rules, prior approval is not required for an increase in capital accomplished through:

(1) Issuance of shares of common stock for cash;

(2) Declaration and payment of pro rata share dividends as defined in the Arkansas Business Corporation Act, § 4-27-101 et seq.; or

(3) Adoption by the board of a resolution directing that all or part of undivided profits be transferred to capital.

(c) Prior approval is not required for a decrease in surplus caused by incurred losses in excess of undivided profits.

History. Acts 1997, No. 940, § 16; 2019, No. 315, § 2572.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a) and the introductory language of (b).

23-51-117. Capital notes or debentures.

(a) With the prior written approval of the Bank Commissioner, any state trust company may, at any time, through action of its board, and without requiring action of its shareholders, issue and sell its capital notes or debentures, which must be subordinate to the claims of depositors and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders.

(b) Capital notes or debentures may be convertible into shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the commissioner, interest due or principal repayable on outstanding capital notes or debentures may not be paid by a state trust company when the state trust company is in hazardous condition or insolvent, as determined by the commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous condition or insolvency, and for such other purposes as may be provided by rules adopted under this chapter.

History. Acts 1997, No. 940, § 17; 2019, No. 315, § 2573.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (d).

23-51-118. Private trust company.

(a) A private trust company engaging in the trust business in this state shall comply with each and every provision of this chapter applicable to a trust company unless expressly exempted therefrom in writing by the Bank Commissioner pursuant to this section or by rule adopted by the commissioner.

(b) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of §§ 23-51-105(11), 23-51-106(b), 23-51-107, 23-51-110(a), 23-51-122, 23-51-126(b), (c), and (d), 23-51-127, and 23-51-128. The commissioner may grant the exemption in whole or in part if the commissioner finds that the private trust company does not and will not transact business with the general public. For purposes of this section:

(1) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not one hundred percent (100%) owned by one or more family members;

(2) "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or which is controlled by one (1) or more trusts or charitable organizations established by the individual or individuals; and

(3) All individuals who control a private trust company or establish trusts or charitable organizations controlling the private trust company must be related within the second degree of affinity or consanguinity.

(c) At the expense of the private trust company, the commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the commissioner shall approve the application for exemption or set the application for hearing not later than sixty (60) days after the date the commissioner considers the application complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision.

(d) Any exemption granted under this section may be made subject to conditions or limitations imposed by the commissioner consistent with this chapter.

(e) The commissioner may adopt rules defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of this chapter that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exempt status.

History. Acts 1997, No. 940, § 18; 2019, No. 315, §§ 2574, 2575.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a); and substituted "rules" for "regulations" in (e).

23-51-119. Requirements for a private trust company.

(a) Application.

(1) A private trust company requesting an exemption from the provisions of this chapter pursuant to § 23-51-118 shall file an application with the Bank Commissioner containing the following:

(A) A non-refundable application fee on an amount not less than three thousand dollars ($3,000) nor more than five thousand dollars ($5,000), as set by rules issued by the commissioner;

(B) A detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application;

(C) A statement under oath of the reason for requesting the exemption;

(D) A statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the commissioner;

(E) The current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a United States Postal Service post office box or a private mail box, postal box, or mail drop; and

(F) Listing of the specific provisions of the chapter for which the request for exemption is made.

(2) The commissioner shall not approve a private trust company exemption unless the application is completed as required in subdivision (a)(1) of this section.

(b) Requirements. To maintain status as an exempt private trust company under this chapter, the private trust company shall comply with the following:

(1) An exempt private trust company shall not transact business with the public;

(2) An exempt private trust company shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the commissioner and be accompanied by a fee set by regulations issued by the commissioner. The annual certification shall be filed on or before June 30 of each year. No annual certification shall be valid unless it bears an acknowledgment stamped by the State Bank Department. The department shall have thirty (30) days from the date of receipt to return a copy of the acknowledged annual certification to the private trust company. The burden shall be on the exempt private trust company to notify the department of any failure to return an acknowledged copy of any annual certification within the thirty-day period. The commissioner may examine or investigate the private state trust company periodically as necessary to verify the certification;

(3) An exempt private trust company shall comply with the principal office provisions of § 23-51-172 and with the address and telephone requirements of subdivision (a)(1)(E) of this section;

(4) The exempt private trust company shall pay all applicable corporate franchise taxes.

(c) Change of Control. Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this chapter and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status must be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.

(d) Authority to Revoke. The commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:

(1) The exempt private trust company makes a false statement under oath on any document required to be filed by the chapter or by any regulation promulgated by the commissioner;

(2) The exempt private trust company fails to submit to an examination as required by § 23-51-184;

(3) The exempt private trust company withholds requested information from the commissioner; or

(4) The exempt private trust company violates any provision of this section applicable to exempt private trust companies.

(e) Notification of Revocation of Exemption. If the commissioner determines from examination or other credible evidence that an exempt private trust company has violated any of the requirements of this section, the commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the exempt private trust company in writing that the private trust company's exempt status has been revoked. The notification must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be sooner than five (5) calendar days after the date the notification is mailed or delivered. The revocation takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that private trust company, and the private trust company shall be subject to all of the requirements and provisions of the chapter applicable to non-exempt state trust companies.

(f) Compliance Period. A private trust company shall have five (5) calendar days after the revocation is effective to comply with the provisions of this chapter from which it was formerly exempt. If, however, the commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the commissioner may shorten or eliminate, in the commissioner's sole discretion, the five (5) calendar days compliance period.

(g) Remedies for Failure to Comply. If the private trust company does not comply with all of the provisions of this chapter, including such

capitalization requirements as have been determined by the commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the commissioner may:

(1) Institute any action or remedy prescribed by this chapter, or any applicable rule; or

(2) Refer the private trust company to the Attorney General for institution of a quo warranto proceeding to revoke the charter.

History. Acts 1997, No. 940, § 19; 2019, No. 315, §§ 2576, 2577.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(1)(A); and deleted "or regulation" following "rule" in (g)(1).

23-51-121. Investment in state trust company facilities — Definition.

(a) In this chapter, "state trust company facility" means real estate, including an improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a state trust company for the purpose of:

(1) Providing space for state trust company employees to perform their duties and space for parking by state trust company employees and customers;

(2) Conducting trust business, including meeting the reasonable needs and convenience of the state trust company's customers, computer operations, document and other item processing, maintenance and record retention and storage;

(3) Holding, improving, and occupying as an incident to future expansion of the state trust company's facilities; or

(4) Conducting another activity authorized by rules adopted under this chapter.

(b) Without the prior written approval of the Bank Commissioner, a state trust company may not directly or indirectly invest an amount in excess of its capital and surplus in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules adopted under this chapter, in computing this limitation a state trust company:

(1) Shall include:

(A) Its direct investment in state trust company facilities;

(B) Any investment in equity or investment securities of a company holding title to a facility used by the state trust company for the purposes specified by subsection (a) of this section;

(C) Any loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and

(D) Any indebtedness incurred on state trust company facilities by a company:

(i) That holds title to the facility;

(ii) That is an affiliate of the state trust company; and

(iii) In which the state trust company is invested in the manner described by subdivision (b)(1)(B) or subdivision (b)(1)(C) of this section; and

(2) May exclude an amount included under subdivisions (b)(1)(B)-(D) of this section to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the state trust company.

(c) Real estate acquired under subdivision (a)(3) of this section and not improved and occupied by the state trust company ceases to be a state trust company facility on the third anniversary of the date of its acquisition, unless the commissioner on application grants written approval to further delay in the improvement and occupation of the property by the state trust company.

(d) A state trust company shall comply with generally accepted accounting principles, consistently applied, in accounting for its investment in and depreciation of state trust company facilities, furniture, fixtures, and equipment.

History. Acts 1997, No. 940, § 21; 2019, No. 315, § 2578.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(4) and the introductory language of (b).

23-51-122. Other real estate.

(a) A state trust company may not acquire real estate except:

(1) As permitted by § 23-51-121 or as otherwise provided by this chapter, including rules adopted under this chapter;

(2) If necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or

(3) With the prior written approval of the Bank Commissioner.

(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section, a state trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve real estate acquired under this subsection or subsection (a) of this section, or acquire additional real estate.

(c) A state trust company shall dispose of any real estate subject to subdivisions (a)(1) and (2) of this section not later than:

(1) The fifth anniversary of the date:

(A) It was acquired, except as otherwise provided by rules adopted under this chapter; or

(B) It ceases to be used as a state trust company facility; or

(2) The third anniversary of the date it ceases to be a state trust company facility as provided by § 23-51-121(c).

(d) The commissioner on application may grant one (1) or more extensions of time for disposing of real estate if the commissioner determines that:

(1) The state trust company has made a good faith effort to dispose of the real estate; or

(2) Disposal of the real estate would be detrimental to the state trust company.

History. Acts 1997, No. 940, § 22; 2019, No. 315, §§ 2579, 2580.
Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(1) and (c)(1)(A).

23-51-123. Securities.

(a) A state trust company may invest its corporate funds in any type or character of equity or investment securities subject to the limitations provided by this section.

(b) Unless the Bank Commissioner approves maintenance of a lesser amount in writing, a state trust company must invest and maintain an amount equal to not less than forty percent (40%) of the state trust company's capital under § 23-51-110 in unencumbered cash, cash equivalents, and readily marketable securities.

(c) Subject to subsection (d) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker, held by the state trust company for its own account, may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base. The commissioner may authorize investments in excess of this limitation on written application if the commissioner concludes that:

(1) The excess investment is not prohibited by other applicable law; and

(2) The safety and soundness of the requesting state trust company is not adversely affected.

(d) Notwithstanding subsection (c) of this section, a state trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(1) Direct obligations of the United States Government;

(2) Obligations of agencies and instrumentalities created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government;

(3) Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of the United States Congress and authorized thereby to issue such a guarantee;

(4) Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of the United States Congress and authorized thereby to issue such commitments or agreements;

(5) General obligations of the states of the United States and of the political subdivisions, municipalities, commonwealths, territories or insular possessions thereof;

(6) Obligations issued by the State Board of Education under authority of the Arkansas Constitution or applicable statutes;

(7) Warrants of political subdivisions of the State of Arkansas and municipalities thereof having maturities not exceeding one (1) year;

(8) Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;

(9) The sale of federal funds with a maturity of not more than one (1) business day;

(10) Demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia, provided funds invested in such demand, savings, or time deposits or accounts are fully insured by a federal deposit insurance agency;

(11) Repurchase agreements that are fully collateralized by direct obligations of the United States Government, and general obligations of any state of the United States or any political subdivision thereof, provided that any such repurchase agreement shall provide for the taking of delivery of the collateral, either directly or through an authorized custodian;

(12) Securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a "money market fund" under 17 C.F.R. § 270.2a-7, provided that the portfolio of such investment company or investment trust is limited principally to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that any such investment company or investment trust shall take delivery of the collateral either directly or through an authorized custodian.

(e) The commissioner may adopt rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment, or limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.

History. Acts 1997, No. 940, § 23; 2019, No. 315, § 2581.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (e).

23-51-125. Subsidiaries.

(a) Except as otherwise provided by this chapter or rules adopted under this chapter, a state trust company may acquire or establish a subsidiary to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary.

(b) A state trust company may not invest more than an amount equal to twenty percent (20%) of its capital base in a single subsidiary and may not invest an amount in excess of forty percent (40%) of its capital base in all subsidiaries. The amount of a state trust company's investment in a subsidiary is the total amount of the state trust company's investment in equity or investment securities issued by its

subsidiary and any loans and extensions of credit from the state trust company to its subsidiary. The Bank Commissioner may authorize investments in excess of these limitations on written application if the commissioner concludes that:

(1) The excess investment is not prohibited by other applicable law; and

(2) The safety and soundness of the requesting state trust company is not adversely affected.

(c) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the commissioner describing in detail the proposed activities of the subsidiary.

(d) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary thirty (30) days after the date the commissioner receives the state trust company's letter, unless the commissioner specifies another date. The commissioner may extend the thirty-day period of review on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the commissioner.

(e) A subsidiary of a state trust company is subject to rule by the commissioner to the extent provided by this chapter or rules adopted under this chapter. In the absence of limiting rules, the commissioner may regulate a subsidiary as if it were a state trust company.

History. Acts 1997, No. 940, § 25; 2019, No. 315, §§ 2582, 2583.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a) and twice in (e); and substituted "rule" for "regulation" in (e).

23-51-127. Engaging in commerce prohibited.

Except as otherwise provided by this chapter or rules adopted under this chapter, a state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing in goods or by owning or operating a business not part of the state trust business, except as necessary to fulfil a fiduciary obligation to a client.

History. Acts 1997, No. 940, § 27; 2019, No. 315, § 2584.

Amendments. The 2019 amendment substituted "rules" for "regulations".

23-51-128. Lending limits.

(a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base.

(b) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base.

All covered transactions between an insider and a state trust company must be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a non-insider.

(c) The Bank Commissioner may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit, and establish collective lending and investment limits.

(d) The commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.

(e) A state trust company may not lend trust deposits, except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.

(f) An officer, director, or employee of a state trust company who approves or participates in the approval of a loan with actual knowledge that the loan violates this section is jointly and severally liable to the state trust company for the lesser of the amount by which the loan exceeded applicable lending limits or the state trust company's actual loss and remains liable for that amount until the loan and all prior indebtedness of the borrower to the state trust company have been fully repaid. The state trust company may initiate a proceeding to collect an amount due under this subsection at any time before the date the borrower defaults on the subject loan or any prior indebtedness or before the fourth anniversary of that date. A person that is liable for and pays amounts to the state trust company under this subsection is entitled to an assignment of the state trust company's claim against the borrower to the extent of the payments. For purposes of this subsection, an officer, director, or employee of a state trust company is presumed to know the amount of the state trust company's lending limit under subsection (a) of this section and the amount of the borrower's aggregate outstanding indebtedness to the state trust company immediately before a new loan or extension of credit to that borrower.

History. Acts 1997, No. 940, § 28; 2019, No. 315, § 2585.

Amendments. The 2019 amendment substituted "rules" for "regulations" twice in (c).

23-51-129. Lease financing transactions.

(a) Subject to rules adopted under this chapter, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request and for the use of a client. Without the written approval of the Bank Commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company may not hold the property more than six (6) months after the date of expiration of the

original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.

(b) Rental payments received by the trust company in a lease financing transaction under this section are considered to be rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of § 23-51-128.

History. Acts 1997, No. 940, § 29; 2019, No. 315, § 2586.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a).

23-51-131. Common investment funds.

(a) A state trust company may establish common trust funds to provide investment to itself as a fiduciary.

(b) The Bank Commissioner may adopt rules to administer and carry out this section, including but not limited to rules to establish investment and participation limitations, disclosure of fees, audit requirements, limit or expand investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to carry out this section.

History. Acts 1997, No. 940, § 31; 2019, No. 315, § 2587.

Amendments. The 2019 amendment substituted "rules" for "regulations" twice in (b).

23-51-133. Pledge of assets.

A state trust company may not pledge or create a lien on any of its assets except to secure the repayment of money borrowed or as specifically authorized or required by § 23-51-130, or by rules adopted under this chapter. An act, deed, conveyance, pledge, or contract in violation of this section is void.

History. Acts 1997, No. 940, § 33; 2019, No. 315, § 2588.

Amendments. The 2019 amendment substituted "rules" for "regulations".

23-51-134. Acquisition of control.

(a) Except as expressly otherwise permitted, a person may not without the prior written approval of the Bank Commissioner directly or indirectly acquire control of a state trust company through a change in a legal or beneficial interest in voting securities of a state trust company or a corporation or other entity owning voting securities of a state trust company.

(b) This chapter does not prohibit a person from negotiating to acquire, but not acquiring, control of a state trust company or a person that controls a state trust company.

(c) This section does not apply to:

(1) The acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt

previously contracted for in good faith if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired;

(2) The acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this chapter or who was identified as a controlling person in a prior application filed with and approved by the commissioner;

(3) An acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired;

(4) A transaction exempted by the commissioner by rule or order because the transaction is not within the purposes of this chapter or the rule of which is not necessary or appropriate to achieve the objectives of this chapter.

History. Acts 1997, No. 940, § 34; 2019, No. 315, § 2589.

Amendments. The 2019 amendment substituted "rule" for "regulation" twice in (c)(4).

23-51-135. Application regarding acquisition of control.

(a) The proposed transferee seeking approval to acquire control of a state trust company or a person that controls a state trust company must file with the Bank Commissioner:

(1) An application in the form prescribed by the commissioner;

(2) The filing fee in an amount not less than one thousand five hundred dollars ($1,500) and not more than three thousand dollars ($3,000), as set by rules issued by the commissioner;

(3) All information required by rule or that the commissioner requires in a particular application as necessary to an informed decision to approve or reject the proposed acquisition.

(b) If the proposed transferee includes any group of individuals or entities acting in concert, the information required by the commissioner may be required of each member of the group.

(c) If the proposed transferee is not an Arkansas resident, an Arkansas company, or an out-of-state company qualified to do business in this state, a written consent to service of process on a resident of this state in any action or suit arising out of or connected with the proposed acquisition.

(d) The proposed transferee must give public notice of the application, its date of filing, and the identity of each participant, in the form specified by the commissioner, through publication by one (1) insertion in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation, promptly after the commissioner accepts the application as complete.

History. Acts 1997, No. 940, § 35; 2019, No. 315, § 2590.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(2); and substituted "rule" for "regulation" in (a)(3).

23-51-136. Hearing and decision on acquisition of control.

(a) Not later than sixty (60) days after the application is officially filed, the Bank Commissioner may approve the application or set the application for hearing. If the commissioner sets a hearing, the commissioner shall conduct a hearing as he or she considers advisable and consistent with governing statutes and rules.

(b) Based on the record, the commissioner may issue an order denying an application if:

(1) The acquisition would substantially lessen competition, be in restraint of trade, result in a monopoly, or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the trust industry in any part of this state, unless:

(A) The anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and

(B) The proposed acquisition is not in violation of law of this state or the United States;

(2) The financial condition of the proposed transferee, or any member of a group composing the proposed transferee, might jeopardize the financial stability of the state trust company being acquired;

(3) Plans or proposals to operate, liquidate, or sell the state trust company or its assets are not in the best interests of the state trust company;

(4) The experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law;

(5) The state trust company will be insolvent, in a hazardous condition, not have adequate capitalization, or not be in compliance with the laws of this state after the acquisition;

(6) The proposed transferee has failed to furnish all information pertinent to the application reasonably required by the commissioner; or

(7) The proposed transferee is not acting in good faith.

(c) If an application filed under this section is approved by the commissioner, the transaction may be consummated. Any written commitment from the proposed transferee offered to and accepted by the commissioner as a condition that the application will be approved is enforceable against the state trust company and the transferee and is considered for all purposes an agreement under this chapter.

History. Acts 1997, No. 940, § 36; 2019, No. 315, § 2591.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a).

23-51-139. Civil enforcement — Criminal penalties.

(a) The Bank Commissioner may bring any appropriate civil action against any person who the commissioner believes has committed or is about to commit a violation of this chapter or a rule or order of the commissioner pertaining to this chapter.

(b) A person who knowingly fails or refuses to file the application required by § 23-51-135 commits an offense. An offense under this subsection is a Class A misdemeanor.

History. Acts 1997, No. 940, § 39; 2019, No. 315, § 2592.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a).

23-51-145. Transactions with management and affiliates.

(a) Without the prior approval of a disinterested majority of the board recorded in the minutes, or if a disinterested majority cannot be obtained the prior written approval of a majority of the disinterested directors and the Bank Commissioner, a state trust company may not directly or indirectly:

(1) Sell or lease an asset of the state trust company to an officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company;

(2) Purchase or lease an asset in which an officer, director or principal shareholder of the state trust company or an affiliate of the state trust company has an interest; or

(3) Subject to § 23-51-128, extend credit to an officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company.

(b) Notwithstanding subsection (a) of this section, a lease transaction described in subdivision (a)(2) of this section involving real property may not be consummated, renewed, or extended without the prior written approval of the commissioner. For purposes of this subsection only, an affiliate of the state trust company does not include a subsidiary of the state trust company.

(c) Subject to § 23-51-128, a state trust company may not directly or indirectly extend credit to an employee, officer, director or principal shareholder of the state trust company or an affiliate of the state trust company, unless the extension of credit:

(1) Is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the state trust company with persons who are not employees, officers, directors, principal shareholders, or affiliates of the state trust company;

(2) Does not involve more than the normal risk of repayment or present other unfavorable features; and

(3) The state trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the state trust company with persons who are not employees,

officers, directors, principal shareholders or affiliates of the state trust company.

(d) An officer or director of the state trust company who knowingly participates in or knowingly permits a violation of this section shall be guilty of a Class D felony.

(e) The commissioner may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.

History. Acts 1997, No. 940, § 45; 2019, No. 315, § 2593.
Amendments. The 2019 amendment substituted "rules" for "regulations" twice in (e).

23-51-148. Bonding requirements.

(a) The board of a state trust company shall require protection and indemnity for clients in reasonable amounts established by rules adopted under this chapter, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies:

(1) Authorized to do business in this state; or

(2) Acceptable to the Bank Commissioner and otherwise lawfully permitted to issue the coverage against those losses in this state.

(b) Except as otherwise provided by rule, coverage required under subsection (a) of this section must include each director, officer, and employee of the state trust company without regard to whether the person receives salary or other compensation.

(c) A state trust company may apply to the commissioner for permission to eliminate the bonding requirement of this section for a particular individual. The commissioner shall approve the application if the commissioner finds that the bonding requirement is unnecessary or burdensome. Unless the application presents novel or unusual questions, the commissioner shall approve the application or set the application for hearing not later than sixty (60) days after the date the commissioner considers the application complete and accepted for filing.

History. Acts 1997, No. 940, § 48; 2019, No. 315, § 2594.
Amendments. The 2019 amendment substituted "rules" for "regulations" in the introductory language of (a); and substituted "rule" for "regulation" in (b).

23-51-150. Merger authority.

(a) With the prior written approval of the Bank Commissioner, a state trust company may merge or consolidate with a state bank to the same extent as a state bank under the Arkansas Banking Code of 1997 or with another person to the same extent as a business corporation under the Arkansas Business Corporation Act, § 4-27-101 et seq., subject to this chapter.

(b) Implementation of a plan of merger by a trust company and a state bank, approval of the board, and shareholders of the parties must be made or obtained as provided by the Arkansas Banking Code of 1997 as if the state trust company were a state bank, except as otherwise provided by rules adopted under this chapter.

(c) Implementation of the plan of merger with a person other than a state bank, approval of the board and shareholders of the parties must be made or obtained as provided by the Arkansas Business Corporation Act, § 4-27-101 et seq., as if the state trust company were a domestic corporation and all other parties to the merger were foreign corporations and other entities, except as otherwise provided by rules adopted under this chapter.

History. Acts 1997, No. 940, § 50; 2019, No. 315, § 2595.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b) and (c).

23-51-151. Merger application.

(a) The original articles of merger, a number of copies of the articles of merger equal to the number of surviving, new, and acquiring entities, and an application in the form required by the Bank Commissioner must be filed with the commissioner. The commissioner shall investigate the condition of the merging parties. The commissioner may require the submission of additional information as considered necessary to an informed decision.

(b) The commissioner may approve the merger if:

(1) Each resulting state trust company will be solvent and have adequate capitalization for its business and location;

(2) Each resulting state trust company has in all respects complied with the statutes and rules relative to the organization of a state trust company;

(3) All fiduciary obligations and liabilities of each state trust company that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a state trust company or other fiduciary;

(4) Each surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state; and

(5) All conditions imposed by the commissioner have been satisfied or otherwise resolved.

History. Acts 1997, No. 940, § 51; 2019, No. 315, § 2596.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b)(2).

23-51-153. Rights of dissenters to mergers.

A shareholder may dissent from the merger to the extent and by following the procedure provided by the Arkansas Business Corporation Act, § 4-27-101 et seq., or rules adopted under this chapter.

History. Acts 1997, No. 940, § 53; 2019, No. 315, § 2597.

Amendments. The 2019 amendment substituted "rules" for "regulations".

23-51-154. Authority to purchase assets of another trust institution.

(a) Subject to the provisions of this section, a state trust company may purchase assets of another state trust company or trust-related assets of another trust institution, including the right to control accounts established with the trust institution. Except as otherwise expressly provided by this chapter or any other applicable statutes, the purchase of all or part of the assets of the trust institution does not make the purchasing state trust company responsible for any liability or obligation of the selling trust institution that is not expressly assumed by the purchasing state trust company. Except as otherwise provided by this chapter, this chapter does not govern or prohibit the purchase by a trust institution of all or part of the assets of a corporation or other entity that is not a trust institution.

(b) An application in the form required by the Bank Commissioner must be filed with the commissioner for any acquisition of all or substantially all of (i) the assets of a state trust company or (ii) the trust assets of another trust institution by a state trust company. The commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision. The commissioner shall approve the purchase if:

(1) The acquiring state trust company will be solvent, not in a hazardous condition and have sufficient capitalization for its business and location;

(2) The acquiring state trust company has complied with all applicable statutes and rules, including without limitation any applicable requirements of §§ 23-51-178 and 23-51-179;

(3) All fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed by the acquiring state trust company;

(4) All conditions imposed by the commissioner have been satisfied or otherwise resolved; and

(5) All fees and costs have been paid.

(c) A purchase requiring an application pursuant to subsection (b) of this section is effective on the date of approval, unless the purchase agreement provides for, and the commissioner consents to, a different effective date.

(d) The acquiring state trust company shall succeed by operation of law to all of the rights, privileges and obligations of the selling trust institution under each account included in the assets acquired.

History. Acts 1997, No. 940, § 54; 2019, No. 315, § 2598.
Amendments. The 2019 amendment substituted "rules" for "regulations" in (b)(2).

23-51-165. Companies authorized to act as fiduciaries.

(a) A company shall not act as a fiduciary in this state except:
(1) A state trust company;
(2) A state bank;
(3) An association organized under the laws of this state and authorized to act as a fiduciary under § 23-37-101 et seq.;
(4) A national bank having its principal office in this state and authorized by the United States Comptroller of the Currency to act as a fiduciary under 12 U.S.C. § 92a;
(5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;
(6) A subsidiary trust company authorized to act as a fiduciary under § 23-47-801 et seq.;
(7) An out-of-state bank with a branch in this state established or maintained under the Arkansas Interstate Banking and Branching Act, § 23-48-901 et seq., or a trust office licensed by the Bank Commissioner under this chapter;
(8) An out-of-state trust company with a trust office licensed by the commissioner under this chapter; or
(9) A foundation.
(b) A company shall not engage in an unauthorized trust activity.

History. Acts 1997, No. 940, § 65; 2019, No. 836, § 4.
Amendments. The 2019 amendment substituted "A company shall not" for "No company shall" in the introductory language of (a) and in (b); inserted "United States" in (a)(4); added (a)(9); and made stylistic changes.

23-51-166. Activities not requiring a charter, etc.

Notwithstanding any other provision of this chapter, a company does not engage in the trust business or in any other business in a manner requiring a charter or license under this chapter or in an unauthorized trust activity by:
(1) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;
(2) Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court or the laws of this state;
(3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(4) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Real Estate License Law, § 17-42-101 et seq.;

(5) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the State Securities Department or the United States Securities and Exchange Commission;

(6) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the State Insurance Department to the extent that the activity is regulated by the State Insurance Department;

(7) Engaging in the lawful sale of prepaid funeral benefits under a permit issued by the State Insurance Department under the Arkansas Prepaid Funeral Benefits Law, § 23-40-101 et seq., or engaging in the lawful business of maintaining a perpetual care cemetery trust pursuant to § 20-17-904 or a permanent maintenance fund for perpetually maintained cemeteries under the Cemetery Act for Perpetually Maintained Cemeteries, § 20-17-1001 et seq.;

(8) Acting as trustee under a voting trust as provided by § 4-26-706 or § 4-27-730;

(9) Engaging in other activities expressly excluded from the application of this chapter by rules issued by the Bank Commissioner;

(10) Rendering services customarily performed by a public accountant or a certified public accountant in a manner authorized by the Arkansas State Board of Public Accountancy;

(11) Provided the company is a trust institution and is not barred by order of the commissioner from engaging in a trust business in this state pursuant to § 23-51-182(b):

(A) Marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state;

(B) Delivering money or other intangible assets and receiving the same from a client or other person in this state; or

(C) Accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client; or

(12) If the company is a foundation, serving as a fiduciary.

History. Acts 1997, No. 940, § 66; 2019, No. 315, § 2599; 2019, No. 836, § 5.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (9).

The 2019 amendment by No. 836 added (12).

23-51-167. Trust business of state trust institution.

(a) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country,

subject to complying with applicable laws of the state or foreign country, at an office established and maintained pursuant to this chapter, at a branch or at any other authorized location other than an office or branch.

(b) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any rule or order of the Bank Commissioner applicable to the state trust institution. Provided, however, that the commissioner may waive any such prohibition if he or she determines, by order or rule, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of the state trust institutions.

History. Acts 1997, No. 940, § 67; 2019, No. 315, § 2600.

Amendments. The 2019 amendment substituted "rule" for "regulation" twice in (b).

23-51-181. Examinations — Periodic reports — Cooperative agreements — Assessment of fees.

(a) To the extent consistent with subsection (c) of this section, the Bank Commissioner may make such examinations of any office established and maintained in this state pursuant to this chapter by an out-of-state trust institution as the commissioner may deem necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of the Arkansas Banking Code of 1997 shall apply to such examinations.

(b) The commissioner may require periodic reports regarding any out-of-state trust institution that has established and maintained an office in this state pursuant to this chapter. The required reports shall be provided by the trust institution or by the home state regulator. Any reporting requirements prescribed by the commissioner under this subsection shall be consistent with the reporting requirements applicable to state trust companies and appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this chapter.

(c) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this state of an out-of-state trust institution, or any office of a state trust institution in any host state, and the commissioner may accept such a party's report of examination and report of investigation in lieu of conducting his or her own examination or investigation.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state trust

institution or an out-of-state trust institution maintaining an office in this state to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract under § 19-11-232.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state trust institution or any office established and maintained by a state trust institution in any host state, provided that the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this chapter or to ensure compliance with the laws of this state, but provided further that in the case of an out-of-state trust institution, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state trust institution that maintains one (1) or more offices in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the commissioner. The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.

History. Acts 1997, No. 940, § 81; 2019, No. 315, § 2601.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the first sentence of (f).

23-51-184. Commissioner shall supervise and examine authorized trust institutions.

Every authorized trust institution shall be under the supervision of the Bank Commissioner. The commissioner shall execute and enforce through the State Bank Department and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this chapter, the commissioner is hereby empowered to promulgate such rules not inconsistent with the provisions of this chapter, as may, in his or her opinion, be necessary to carry out the provisions of the laws relating to authorized trust institutions and as may be further necessary to insure safe and conservative management of an authorized trust institution under his or her supervision taking into consideration the appropriate interest of the creditors, stockholders, and the public in their relations with the authorized trust institutions. All authorized trust institutions doing business under the provisions of this chapter

shall conduct their business in a manner consistent with all laws relating to authorized trust institutions and all rules and instructions that may be promulgated or issued by the commissioner.

History. Acts 1997, No. 940, § 84; 2019, No. 315, § 2602.
Amendments. The 2019 amendment substituted "rules" for "regulations" in the third and fourth sentences.

23-51-187. Confidential records.

(a) The following records of the State Bank Department shall be confidential and shall not be exhibited or revealed to the public except as stated in this section or in accordance with department rules:

(1) All examination reports filed with the department;

(2) All records disclosing information obtained from examinations;

(3) Investigations and reports revealing facts concerning a state trust company or the customers of the organization; and

(4) All personal financial statements submitted to the department for any purpose.

(b) Notwithstanding any provision of this section to the contrary, records deemed confidential in accordance with this section may, in the Bank Commissioner's discretion, be disclosed as follows:

(1) Under a validly issued subpoena and, in the interest of justice, the commissioner may waive the privilege created herein and produce examination reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction when the order is designed to protect the confidential nature of the information so disclosed from public dissemination;

(2) Official orders of the department may be disclosed within the discretion of the commissioner if the commissioner makes a determination that such a disclosure would not give advantage to a competitor or adversely affect the safety and soundness of the state trust company; and

(3) To federal financial institutions' regulatory agencies and financial institutions' regulatory agencies of other states.

(c) The commissioner shall have the power to promulgate rules with regard to disclosure of confidential information.

History. Acts 1997, No. 940, § 87; 2019, No. 315, §§ 2603, 2604.
Amendments. The 2019 amendment substituted "rules" for "regulations" in the introductory language of (a) and in (c).

23-51-188. Administrative orders — Penalties for violation.

(a) In addition to any other powers conferred by this chapter, the Bank Commissioner shall have the power to:

(1) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this chapter or any lawful rule issued thereunder;

(2) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution;

(3) Order any company to cease engaging in an unauthorized trust activity;

(4) Enter any order pursuant to § 23-51-182.

(b) The commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000) for each violation by any authorized trust institution, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (a)(1) of this section. Provided further, the commissioner may impose a civil money penalty of not more than five hundred dollars ($500) per day for each day that an authorized trust institution, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (a)(2) or subdivision (a)(3) of this section.

History. Acts 1997, No. 940, § 88; 2019, No. 315, § 2605.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a)(1).

23-51-191. Removal of directors, officers, and employees.

Consistent with § 23-51-189, the Bank Commissioner shall have the right, and is hereby empowered, to require the immediate removal from office of any officer, director, or employee of any authorized trust institution who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the authorized trust institution or who persistently violates the laws of this state or the lawful orders, instructions, and rules issued by the commissioner.

History. Acts 1997, No. 940, § 91; 2019, No. 315, § 2606.

Amendments. The 2019 amendment substituted "rules" for "regulations".

CHAPTER 54

REVERSE MORTGAGE PROTECTION ACT

23-54-108. Default.

RESEARCH REFERENCES

ALR. Requirements Under State Law for Foreclosure on Home Equity Conversion Mortgages or So-Called Reverse Mortgages. 21 A.L.R.7th Art. 4 (2017).

CHAPTER 55

UNIFORM MONEY SERVICES ACT

ARTICLE.

A.C.R.C. Notes. Amendments to this chapter by Acts 2009, No. 486, Acts 2011, No. 733, Acts 2013, No. 531, Acts 2017, No. 620, Acts 2019, Nos. 111, 315, and 910, and Acts 2021, No. 532, were not derived from an official revision of the Uniform Money Services Act by the Uniform Law Commission.

ARTICLE 1

General Provisions

SECTION.

23-55-102. Definitions.

In this chapter:

(1) "Applicant" means a person that files an application for a license under this chapter.

(2) "Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee.

(3) "Bank" means an institution organized under federal or state law which:

(A) accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans; or

(B) engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than $100,000, and does not engage in the business of making commercial loans.

(4) "Commissioner" means the Securities Commissioner.

(5) "Control" means:

(A) ownership of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;

(B) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or

(C) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(6) "Currency exchange" means receipt of revenues from the exchange of money of one government for money of another government.

(7) "Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(8) "Licensee" means a person licensed under this chapter.

(9) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(10) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(11) "Money services" means money transmission or currency exchange.

(12)(A) "Money transmission" means selling or issuing payment instruments, stored value, or prepaid access, or receiving money, virtual currency, or monetary value for transmission.

(B) "Money transmission" does not include providing delivery services such as courier or package delivery services or acting as a mere conduit for the transmission of data.

(13) "Outstanding," with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.

(14) "Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this State.

(18) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(19)(A) "Stored value" means monetary value that is evidenced by an electronic record representing a claim against the issuer stored on an electronic or digital medium or device, including without limitation a card, and evidenced by an electronic or digital record, intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services.

(B) "Stored value" does not include any prepaid access or stored value that is only redeemable by the issuer for goods or services provided by the issuer or an affiliate of the issuer except to the extent required by applicable law to be redeemable in cash for the cash value of the goods or services.

(20) "Unsafe or unsound practice" means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

(21) "Prepaid access" means access to funds or the value of funds that have been paid in advance that can be retrieved or transferred in the future through an electronic device or vehicle, including without limitation a card, code, electronic serial number, mobile identification number, or personal identification number.

(22)(A) "Virtual currency" means a digital representation of value that:

(i) is used as a medium of exchange, a unit of account, or a store of value; and

(ii) does not have legal tender status as recognized by the United States Department of the Treasury.

(B) "Virtual currency" does not include the software or protocols governing the transfer of a digital representation of value or other uses of a virtual distributed ledger system to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, §§ 1-3; 2011, No. 733, § 1; 2013, No. 531, § 1; 2021, No. 532, §§ 1-3.

Amendments. The 2021 amendment inserted "or prepaid access" and "virtual currency" in (12)(A); rewrote (19); and added (22).

23-55-103. Exclusions.

This chapter does not apply to:

(1) the United States or a department, agency, or instrumentality thereof;

(2) money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service;

(3) a state, county, city, or any other governmental agency or governmental subdivision of a State;

(4) a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant

to the Bank Service Company Act, 12 U.S.C. §§ 1861-1867 (Supp. V 1999), or corporation organized under the Edge Act, 12 U.S.C. §§ 611-633 (1994 & Supp. V 1999) under the laws of a State or the United States if it does not issue, sell, or provide payment instruments, stored value, prepaid access, or virtual currency through an authorized delegate that is not such a person;

(5) electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a State or governmental subdivision, agency, or instrumentality thereof;

(6) a board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. §§ 1-25 (1994), or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;

(7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

(8) a person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;

(9) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, similar funds transfers, prepaid access, or virtual currency;

(10) a person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer;

(11) a credit union regulated and insured by the National Credit Union Administration;

(12) an agent appointed by a payee to collect and process payment as the agent of the payee, if the agent can demonstrate that:

(A) there exists a written agreement between the payee and the agent directing the agent to collect and process payments on behalf of the payee;

(B) the payee holds the agent out to the public as accepting payments on behalf of the payee; and

(C) payment is treated as received by the payee upon receipt by the agent so that there is no risk of loss to the individual initiating the transaction if the agent fails to remit the funds to the payee;

(13) virtual currency or other digital representation of value redeemable exclusively for goods or services and limited to transactions involving a defined merchant, including without limitation a rewards program;

(14) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or

family of games sold by the same publisher or offered on the same game platform; or

(15) uses of a virtual distributed ledger system to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange.

History. Acts 2007, No. 1595, § 1; 2013, No. 531, §§ 2, 3; 2021, No. 532, §§ 4-6.

Amendments. The 2021 amendment inserted "or virtual currency" in (4) and (9); and added (12) through (15).

ARTICLE 2

Money Transmission Licenses

23-55-202. Application for license.

(a) In this section, "material litigation" means litigation that according to generally accepted accounting principles or international financial reporting standards is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(b) A person applying for a license under this article shall do so in a form and in a medium prescribed by the commissioner. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the 10-year period next preceding the submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this State;

(4) a list of the applicant's proposed authorized delegates and the locations in this State where the applicant and its authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other States in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another State;

(6) information concerning any bankruptcy or receivership proceedings affecting the licensee;

(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored value or prepaid access is recorded, if applicable;

(8) the name and address of any bank through which the applicant's payment instruments, stored value, or prepaid access will be paid;

(9) a description of the source of money and credit to be used by the applicant to provide money services;

(10) any other information the commissioner reasonably requires with respect to the applicant;

(11) the name of a person submitted by the applicant as the responsible individual and information on that person to include:

(A) legal name;

(B) residential and business addresses;

(C) date of birth;

(D) Social Security number;

(E) employment history for the five-year period preceding the submission of the application; and

(F) documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States;

(12) for the ten-year period preceding submission of the application, a list of:

(A) any criminal convictions of the proposed responsible individual of the applicant;

(B) any litigation involving the proposed responsible individual relating to the provision of money services; and

(C) any material litigation in which the applicant has been involved;

(13) a list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual of the applicant; and

(14) information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual of the applicant.

(c) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(1) the date of the applicant's incorporation or formation and State or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the State or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the 10-year period next preceding the submission of the application of each executive officer, manager, director, or person that has control, of the applicant;

(5) a list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control of, the

applicant has been involved in the 10-year period next preceding the submission of the application;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(7) a copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application;

(8) if the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under § 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m (1994 & Supp. V 1999);

(9) evidence of the applicant's registration or qualification to do business in this state;

(10) if the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under § 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m (1994 & Supp. V 1999); or

(B) a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(11) if the applicant has a registered agent in this State, the name and address of the applicant's registered agent in this State; and

(12) any other information the commissioner reasonably requires with respect to the applicant.

(d) A nonrefundable application fee of $1,500 and a license fee of $750 must accompany an application for a license under this article. The license fee must be refunded if the application is denied.

(e) The commissioner may waive one or more requirements of subsections (b) and (c) or permit an applicant to submit other information in lieu of the required information.

(f) The application shall be accompanied by the surety bond required by § 23-55-204.

(g)(1) Each officer, director, responsible individual, and owner applicant shall furnish information concerning his or her identity.

(2) The information described in subdivision (g)(1) shall include:

(A) a state and national criminal background check to be conducted by the Identification Bureau of the Division of Arkansas State Police or the Federal Bureau of Investigation; and

(B) other pertinent facts, as the commissioner may reasonably require.

(3)(A) As part of an application for a license under this chapter, or periodically upon license renewal, the commissioner may receive criminal history record information that includes nonconviction information as defined in § 12-12-1001.

(B) The State Securities Department may only disseminate nonconviction information obtained under this section to a criminal justice agency.

(4) This subsection does not apply if an applicant or an applicant's corporate parent is a publicly traded entity.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, §§ 6, 7; 2013, No. 531, § 4; 2019, No. 111, § 1; 2021, No. 532, §§ 7, 8.

Amendments. The 2019 amendment inserted "or international financial reporting standards" in (a).

The 2021 amendment added (b)(11) through (b)(14) and (g).

23-55-204. Surety bonds.

(a)(1) Except as otherwise provided in subsection (b), a money transmission licensee shall maintain a surety bond in an amount based on the previous year's:

(A) Money transmission dollar volume;

(B) Payment instrument dollar volume; and

(C) Stored value dollar volume.

(2) The minimum surety bond amount shall be at least $10,000, and the maximum surety bond amount shall not exceed $300,000.

(3) The commissioner may set specific required bond amounts by rule.

(b) The surety bond must be in a form satisfactory to the commissioner.

(c) Every surety bond shall provide for suit on the bond by any person who has a cause of action under this chapter. The aggregate liability of the surety to all persons, cumulative or otherwise, may not exceed the principal sum of the bond.

(d) A surety bond must cover claims for so long as the commissioner specifies, but for at least five years after the licensee ceases to provide money services in this State. However, the commissioner may permit the amount of a surety bond to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored-value and prepaid access obligations outstanding in this State is reduced.

(e) The commissioner may increase the amount of a surety bond required to a maximum of $1,000,000 if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses, or other relevant criteria.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 9; 2011, No. 733, § 4; 2013, No. 531, § 5; 2017, No. 620, § 1; 2019, No. 111, § 2.

Amendments. The 2017 amendment substituted "Surety bonds" for "Security" in the section heading; deleted "and payable to the State for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission" from the end of (b); rewrote (c); substituted "a surety bond" for "security" in the second sentence of (d); redesignated former (f) as present (e); and substituted "a surety bond" for "security" in (e).

The 2019 amendment rewrote (a).

RESEARCH REFERENCES

Ark. L. Rev. Carol R. Goforth, The Case for Preempting State Money Transmission Laws for Crypto-Based Businesses, 73 Ark. L. Rev. 301 (2020).

23-55-205. Issuance of license.

(a) When an application is filed under this article, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant under this article if the commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with §§ 23-55-202, 23-55-204, and 23-55-207;

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission; and

(3) an applicant, an officer, a person who exercises control over the applicant, or a responsible individual shall not be listed on a specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or as an individual or entity designated by the United States Department of State under Exec. Order No. 13224, issued on September 23, 2001, 66 Fed. Reg. 49079.

(b) When an application for an original license under this article is complete, the commissioner shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner shall approve or deny the application within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the commissioner shall issue the license under this article, to take effect as of the first business day after expiration of the 120-day period.

(c) The commissioner may for good cause extend the application period.

(d) An applicant whose application is denied by the commissioner under this article may appeal, within 30 days after receipt of the notice of the denial, from the denial and request a hearing before the commissioner.

(e) A license issued under this article expires annually at the close of business on December 31 unless the license is:

(1) renewed according to this article;

(2) surrendered by the license holder;

(3) suspended; or

(4) revoked by the commissioner.

(f)(1) A money transmitter licensee may surrender a license by providing the commissioner with a written notice of surrender through the automated licensing system approved by the commissioner.

(2) The written notice of surrender shall include notice of where the records of the money transmitter licensee will be stored and the name, address, telephone number, and other contact information of a responsible party who is authorized to provide access to the records.

(3) The surrender of a license does not reduce or eliminate the civil or criminal liability of a money transmitter licensee arising from acts or omissions occurring before the surrender of the license, including any administrative actions undertaken by the commissioner to revoke or suspend a license, to assess fines, to order payment of restitution, or to exercise any other authority authorized under this chapter.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 10; 2011, No. 733, § 5; 2021, No. 532, §§ 9, 10.

Amendments. The 2021 amendment added (a)(3) and (f).

RESEARCH REFERENCES

Ark. L. Rev. Carol R. Goforth, The Case for Preempting State Money Transmission Laws for Crypto-Based Businesses, 73 Ark. L. Rev. 301 (2020).

23-55-206. Renewal of license.

(a) A licensee under this article shall pay an annual renewal fee of $750 no later than December 31 in order to be licensed for the next calendar year.

(b) A licensee under this article shall submit a renewal report with the renewal fee, in a form prescribed by the commissioner. The renewal report must state or contain:

(1) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in §§ 23-55-701 and 23-55-702; and

(2) proof that the licensee continues to maintain an adequate surety bond as required by § 23-55-204.

(c) A licensee shall comply with subsections (a) and (b) within thirty (30) days of the renewal date.

(d) The commissioner for good cause may grant an extension of the renewal date.

History. Acts 2007, No. 1595, § 1; 2011, No. 733, § 6; 2013, No. 531, § 6; 2017, No. 620, § 2; 2019, No. 111, § 3; 2021, No. 532, §§ 11, 12.

Amendments. The 2017 amendment deleted former (b)(1) and redesignated the remaining subdivisions accordingly; and substituted "an adequate surety bond" for "adequate security" in present (b)(3).

The 2019 amendment substituted "December 31 in order to be licensed for the next calendar year" for "December 1 for

the succeeding calendar year or, if December 1 is not a business day, on the next business day" in (a).

The 2021 amendment deleted former (b)(1); redesignated (b)(2) and (b)(3) as (b)(1) and (b)(2); and, in (c), substituted "shall" for "that does not" and substituted "within thirty (30) days of the renewal date" for "by December 1 shall pay a late fee of $250 if the complete renewal application is received before the expiration of the license".

RESEARCH REFERENCES

Ark. L. Rev. Carol R. Goforth, The Case for Preempting State Money Transmission Laws for Crypto-Based Businesses, 73 Ark. L. Rev. 301 (2020).

23-55-207. Net worth.

(a) A licensee under this article shall maintain a net worth that is calculated at $10,000 for every $1,000,000 of the total previous year's:

(1) Money transmission dollar volume;

(2) Payment instrument dollar volume; and

(3) Stored value dollar volume.

(b)(1) A licensee shall maintain a minimum net worth of at least $50,000.

(2) The commissioner may set specific required net worth amounts by rule.

History. Acts 2007, No. 1595, § 1; 2019, No. 111, § 4.

Amendments. The 2019 amendment added the (a) designation; substituted "that is calculated at $10,000 for every $1,000,000 of the total previous year's" for "of at least $250,000 determined in accordance with generally accepted accounting principles" in the introductory language of (a); added (a)(1)-(3); and added (b).

RESEARCH REFERENCES

Ark. L. Rev. Carol R. Goforth, The Case for Preempting State Money Transmission Laws for Crypto-Based Businesses, 73 Ark. L. Rev. 301 (2020).

ARTICLE 4

Currency Exchange Licenses

SECTION.
23-55-402. Application for license.
23-55-403. Issuance of license.
23-55-404. Renewal of license.

23-55-402. Application for license.

(a) A person applying for a license under this article shall do so in a form and in a medium prescribed by the commissioner. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager, and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in this State where the applicant proposes to engage in currency exchange, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in currency exchange;

(5) other information the commissioner reasonably requires with respect to the applicant, but not more than the commissioner may require under § 23-55-201 et seq.;

(6) the name of a person submitted by the applicant as the responsible individual and information on that person to include:

(A) legal name;

(B) residential and business addresses;

(C) date of birth;

(D) Social Security number;

(E) employment history for the five-year period preceding the submission of the application; and

(F) documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States;

(7) for the ten-year period preceding the submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any litigation involving the proposed responsible individual relating to the provision of money services, and any material litigation in which the applicant has been involved;

(8) a list of other states in which the applicant engages in currency exchange or provides other money services and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(9) a list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the responsible individual of the applicant; and

(10) information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the responsible individual of the applicant.

(b) A nonrefundable application fee of $1,500 and a license fee of $375 must accompany an application for a license under this article. The license fee must be refunded if the application is denied.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 11; 2019, No. 111, § 5; 2021, No. 532, § 13.

Amendments. The 2019 amendment substituted "license fee of $375" for "license fee of "$750" in (b).

The 2021 amendment added (a)(6) through (a)(10).

23-55-403. Issuance of license.

(a) When an application for a license is made under this article, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an on-site investigation of

the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant under this article if the commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with § 23-55-402; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

(b) When an application for an original license under this article is complete, the commissioner shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner shall approve or deny the application within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the commissioner shall issue the license under this article, to take effect as of the first business day after expiration of the period.

(c) The commissioner may for good cause extend the application period.

(d) An applicant whose application is denied a license by the commissioner under this article may appeal, within 30 days after receipt of the notice of the denial, from the denial and request a hearing.

(e) A license issued under this chapter expires at the close of business on December 31 of the calendar year unless the license is:

(1) renewed according to this chapter;

(2) surrendered by the license holder;

(3) suspended; or

(4) revoked by the commissioner.

History. Acts 2007, No. 1595, § 1; 2009, No. 164, § 13; 2011, No. 733, § 8; 2019, No. 111, § 6.

Amendments. The 2019 amendment deleted "second" preceding "calendar year" in the introductory language of (e).

23-55-404. Renewal of license.

(a) A licensee under this article shall pay an annual renewal fee of $375 no later than December 31 in order to be licensed for the next calendar year.

(b) A licensee under this article shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report must contain a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in currency exchange, including limited stations and mobile locations.

(c) A licensee may renew a license after the time specified in subsection (a) if the licensee renews within thirty (30) days of the renewal date by:

(1) paying $375 as required under subsection (a);

(2) complying with the requirements in subsection (b); and

(3) paying a late fee of $250 so long as the complete renewal application is received.

(d)(1) The commissioner for good cause may grant an extension of the renewal date.

(2) If a licensee has not renewed a license within thirty (30) days of the renewal date and has not shown good cause to receive an extension of the renewal date as described under subdivision (d)(1), then it shall be necessary for the licensee to submit a new application to engage in the business of currency exchange.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 12; 2011, No. 733, § 9; 2019, No. 111, § 7; 2021, No. 532, § 14.

Amendments. The 2019 amendment rewrote (a); substituted "if the licensee renews within thirty (30) days of the renewal date" for "before the expiration of the license" in the introductory language of (c); substituted "$375 as required under subsection (a)" for "$750" in (c)(1); and added (d)(2).

The 2021 amendment deleted (b)(1); and removed the (b)(2) designation.

ARTICLE 5

Authorized Delegates

SECTION.

23-55-501. Relationship between licensee and authorized delegate.

(a) In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(b) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient for compliance with this chapter.

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(d) If a license is suspended or revoked, the commissioner shall notify all authorized delegates of the licensee whose names are in a record filed with the commissioner of the suspension, revocation, or nonrenewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

(e) An authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage under § 23-55-201 et seq. or § 23-55-401 et seq. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.

(f) An authorized delegate may not use a subdelegate to conduct money services on behalf of a licensee.

History. Acts 2007, No. 1595, § 1; 2021, No. 532, § 15.

Amendments. The 2021 amendment deleted "or a licensee does not renew its license" following "revoked" in the first sentence of (d).

ARTICLE 6

Examinations — Reports — Records

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

23-55-601. Authority to conduct examinations and investigations.

(a) The Securities Commissioner or the commissioner's designee may conduct an annual examination of a licensee or of any of its authorized delegates upon 45 days' notice in a record to the licensee.

(b) The commissioner may examine a licensee or its authorized delegate, at any time, without notice, if the commissioner has reason to believe that the licensee or authorized delegate is engaging in an unsafe

or unsound practice or has violated or is violating this chapter or a rule adopted or an order issued under this chapter.

(c)(1) The licensee, applicant, or person subject to licensing under this chapter shall pay a fee for each examination, not to exceed one hundred fifty dollars ($150) per examiner for each day or for part of a day during which the examiner is conducting the examination.

(2) In addition to the fee prescribed under subdivision (c)(1) of this section, the licensee, applicant, or person subject to licensing under this chapter may be required to pay the actual hotel and traveling expenses of each examiner traveling to and from the office of the commissioner while the examiner is conducting the examination.

(d) Information obtained during an examination under this chapter may be disclosed only as provided in § 23-55-607.

(e) The commissioner may:

(1) Make any investigations within or outside of this state that he or she deems necessary to determine whether a person has violated or is about to violate this chapter or any rule or order under this chapter, or to aid in the enforcement of this chapter;

(2) Require or permit a person to file a sworn, written statement or submit any other form of evidence concerning the matter to be investigated; and

(3) Publish information concerning a violation of this chapter or a rule or order issued under this chapter.

(f) For the purpose of an investigation or proceeding under this chapter, the commissioner or the commissioner's designee may:

(1) Administer oaths and affirmations;

(2) Subpoena and compel the attendance of witnesses;

(3) Take evidence; and

(4) Require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner deems relevant or material to the inquiry.

(g)(1) In case of contumacy by or the refusal to obey a subpoena issued to a person, the Pulaski County Circuit Court upon application by the commissioner may order the person to appear before the commissioner or the commissioner's designee to testify or produce documentary or other evidence concerning the matter under investigation or in question.

(2) Failure to obey the order of the court may be punished by the court as a contempt of court.

(h)(1) A person shall not refuse to appear, testify, or produce evidence before the commissioner or the commissioner's designee on the ground that the testimony or evidence may tend to incriminate the person or subject the person to a penalty or forfeiture.

(2)(A) After claiming a privilege against self-incrimination, an individual shall not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the individual is compelled to testify or produce evidence, documentary or otherwise.

(B) However, an individual is not exempt from prosecution and punishment for perjury or contempt committed while testifying or producing evidence, documentary or otherwise.

(i)(1) To aid an examination or investigation under this chapter, the commissioner or the commissioner's designee may at any time examine:

(A) The business of a licensee, an authorized delegate of a licensee, or any other person engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of this chapter; and

(B) Wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of a licensee, an authorized delegate of a licensee, or any other person engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of this chapter.

(2) The commissioner or the commissioner's designee shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults to conduct the examination or investigation under this section.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 13; 2011, No. 733, § 10; 2021, No. 532, § 16.

Amendments. The 2021 amendment deleted "absent from the office of the commissioner for the purpose of" preceding "conducting" in (c)(1).

RESEARCH REFERENCES

Ark. L. Rev. Carol R. Goforth, The Case for Preempting State Money Transmission Laws for Crypto-Based Businesses, 73 Ark. L. Rev. 301 (2020).

23-55-603. Reports.

(a) A licensee shall file with the commissioner within 15 business days any material changes in information provided in a licensee's application as prescribed by the commissioner.

(b) A licensee shall file with the commissioner within 45 days after the end of each calendar quarter a current list of all authorized delegates, and locations in this State where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

(c) A money transmission licensee shall file with the commissioner within 90 days after the end of the money transmission licensee's fiscal year a copy of the money transmission licensee's audited financial statement from the most recently completed fiscal year or, if the money transmission licensee is a wholly owned subsidiary of another corporation, the consolidated audited financial statement of the parent corporation from the most recently completed fiscal year or the money transmission licensee's consolidated audited annual financial statement from the most recently completed fiscal year.

(d) A licensee shall file a report with the commissioner within 3 business days after the licensee has reason to know of the occurrence of the following events:

(1) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. §§ 101-110 (1994 & Supp. V 1999), for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership, the commencement of judicial or administrative proceedings for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(3) the commencement of a proceeding to revoke or suspend its license in a state or country that the licensee engages in business or is licensed;

(4) the cancellation or impairment of the licensee's bond or other security;

(5) a charge or conviction of the licensee or of an executive officer, manager, director, or person in control of the licensee, for a felony; or

(6) a charge or conviction of an authorized delegate for a felony.

(e) A licensee shall file with the commissioner within 45 days after the end of each calendar quarter, in a form acceptable to the commissioner, a report of the number and monetary amount of payment instruments, stored-value, prepaid access, and virtual currency sold by the licensee in this State for that quarter, and the monetary amount of payment instruments, stored-value, prepaid access, and virtual currency currently outstanding.

(f) The commissioner may for good cause grant an extension of the reporting date.

History. Acts 2007, No. 1595, § 1; 2011, No. 733, §§ 11, 12; 2017, No. 620, §§ 3, 4; 2021, No. 532, § 17.

Amendments. The 2017 amendment substituted "calendar" for "fiscal" in (b); and added (e) and (f).

The 2021 amendment, in (e), inserted "in a form acceptable to the commissioner" and inserted "and virtual currency" twice.

RESEARCH REFERENCES

Ark. L. Rev. Carol R. Goforth, The Case for Preempting State Money Transmission Laws for Crypto-Based Businesses, 73 Ark. L. Rev. 301 (2020).

23-55-604. Change of control.

(a) A licensee shall:

(1) give the commissioner notice in a record of a proposed change of control within 15 days after learning of the proposed change of control;

(2) request approval of the acquisition; and

(3) submit a nonrefundable fee of $1,000 with the notice.

(b) After review of a request for approval under subsection (a), the commissioner may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The

additional information must be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

(c) The commissioner shall approve a request for change of control under subsection (a) if, after investigation, the commissioner determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

(d) When an application for a change of control under this article is complete, the commissioner shall notify the licensee in a record of the date on which the request was determined to be complete and:

(1) the commissioner shall approve or deny the request within 120 days after that date; or

(2) if the request is not approved or denied within 120 days after that date:

(A) the request is deemed approved; and

(B) the commissioner shall permit the change of control under this section, to take effect as of the first business day after expiration of the period.

(e) The commissioner, by rule or order, may exempt a person from any of the requirements of subsection (a)(2) and (3) if it is in the public interest to do so.

(f) Subsection (a) does not apply to a public offering of securities.

(g) [Repealed.]

History. Acts 2007, No. 1595, § 1; 2009, No. 164, § 14; 2021, No. 532, § 18.

Amendments. The 2021 amendment repealed (g).

23-55-605. Records.

(a) A licensee shall maintain the following records for determining its compliance with this chapter for at least five years:

(1) a record of each payment instrument, stored-value, virtual currency, or prepaid access obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding payment instruments and stored-value and prepaid access obligations;

(5) records of each payment instrument, stored-value, virtual currency, and prepaid access obligation paid within the five-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) any other records the commissioner reasonably requires by rule.

(b) The items specified in subsection (a) may be maintained photographically, electronically, or in any other form of record allowed by the commissioner.

(c) Records may be maintained outside this State if they are made accessible to the commissioner on seven business-days' notice that is sent in a record.

(d) All records maintained by the licensee as required in subsections (a) through (c) are open to inspection by the commissioner pursuant to § 23-55-601.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 15; 2013, No. 531, § 7; 2021, No. 532, § 19.

Amendments. The 2021 amendment substituted "five years" for "three years" in the introductory language of (a); inserted "virtual currency" in (a)(1); and, in (a)(5), inserted "virtual currency", and substituted "five-year period" for "three-year period".

23-55-606. Anti-money laundering program and reports.

(a) Every licensee shall comply with all state and federal laws, rules, and regulations relating to the detection and prevention of money laundering.

(b) Every licensee shall maintain an anti-money laundering program in accordance with 31 C.F.R. § 103.125. The program shall be reviewed and updated as necessary to ensure that the program continues to be effective in detecting and deterring money laundering activities.

(c) At a minimum, the program shall include:

(1) A system of internal controls to ensure ongoing compliance;

(2) Independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designation of an individual or individuals who are responsible for coordinating and monitoring day-to-day compliance;

(4) Training for appropriate personnel; and

(5) Appropriate risk-based procedures for conducting ongoing customer due diligence to include without limitation:

(A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(B)(i) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

(ii) For purposes of subdivision (c)(5)(B)(i) of this section, customer information shall include information regarding the beneficial owners of legal entity customers.

(d) Every licensee shall comply with the regulations of its federal functional regulator governing such programs.

(e) A licensee and an authorized delegate shall file with the commissioner all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. § 5311 (1994), 31 C.F.R. § 103 (2000), and other federal and state laws pertaining to money laundering.

(f) The timely filing of a complete and accurate report required under subsection (e) of this section with the appropriate federal agency satisfies compliance with the requirements of subsection (e) of this section, unless the commissioner notifies the licensee that reports of

this type are not being regularly and comprehensively transmitted by the federal agency to the commissioner.

History. Acts 2007, No. 1595, § 1; 2017, No. 620, § 5.

Amendments. The 2017 amendment substituted "Anti-money laundering program and reports" for "Money laundering reports" in the section heading; added present (a) through (d); redesignated former (a) and (b) as (e) and (f); and, in (f), substituted "(e) of this section" for "(a)" twice and substituted "satisfies" for "is".

23-55-607. Confidentiality.

(a) Unless otherwise specified in this section, all information filed with the commissioner shall be available for public inspection under rules promulgated by the commissioner consistent with state and federal law governing the disclosure of public information.

(b) Except for reasonably segregable portions of information and records that by law would routinely be made available to a party other than an agency in litigation with the commissioner, the commissioner shall not publish or make available:

(1) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an investigation, examination, or inspection of the books and records of any person;

(2) Interagency or intra-agency memoranda or letters, including without limitation:

(A) Records that reflect discussions between or consideration by the commissioner or members of the staff of the State Securities Department or the staff of the Department of Commerce working for the State Securities Department, or both, of any action taken or proposed to be taken by the commissioner or by any members of the staff of the State Securities Department or the staff of the Department of Commerce working for the State Securities Department; and

(B) Reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's staff, prepared in the course of an:

(i) Inspection of the books or records of a person whose affairs are regulated by the commissioner; or

(ii) Examination, investigation, or litigation conducted by or on behalf of the commissioner;

(3) Personnel files, medical files, and similar files if disclosure would constitute a clearly unwarranted invasion of personal privacy, including without limitation:

(A) Information concerning employees of the State Securities Department or employees of the Department of Commerce working for the State Securities Department and all persons subject to rule by the State Securities Department; and

(B) Personal information reported to the commissioner under the department's rules concerning registration about employees of applicants, licensees, or their agents;

(4)(A) Investigatory records compiled for law enforcement purposes to the extent that production of the records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication; or

(iii) Disclose the identity of a confidential source.

(B) The commissioner may also withhold investigatory records that would:

(i) Constitute an unwarranted invasion of personal privacy;

(ii) Disclose investigative techniques and procedures; or

(iii) Endanger the life or physical safety of law enforcement personnel.

(C) As used in this section, "investigatory records" includes:

(i) All documents, records, transcripts, correspondence, and related memoranda and work products concerning examinations and other investigations and related litigation as authorized by law that pertain to or may disclose the possible violation by any person of any provision of the statutes or rules administered by the commissioner; and

(ii) All written communications from or to any person confidentially complaining or otherwise furnishing information about a possible violation, as well as all correspondence and memoranda in connection with the confidential complaint or information;

(5) Information contained in or related to examinations, operating reports, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, check issuers, money transmitters, money services providers, or money service businesses;

(6)(A) Financial records of any applicant, licensee, or the agent of an applicant or licensee obtained during or as a result of an examination by the commissioner.

(B) However, when a record under this article is required to be filed with the commissioner as part of an application for license, annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, shall be public information unless sections of the information are bound separately and are marked "confidential" by the applicant, licensee, or agent upon filing.

(C) Information under subdivision (b)(6)(B) of this section bound separately and marked "confidential" shall be deemed nonpublic until ten (10) days after the commissioner has given the applicant, licensee, or agent notice that an order will be entered deeming the material public information.

(D) An applicant, licensee, or agent may seek an injunction from the Pulaski County Circuit Court ordering the commissioner to withhold the information as nonpublic pending a final order from a court of competent jurisdiction if the order of the commissioner under subdivision (b)(6)(C) of this section is appealed under applicable law;

(7) Trade secrets obtained from any person; or

(8) Any other records that are required to be closed to the public and are not deemed open to public inspection under other law.

(c) The commissioner may disclose information not otherwise subject to disclosure under subsection (a) to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information; or the commissioner finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given previous notice by the commissioner of its intent to release the information.

(d) This section does not prohibit the commissioner from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data concerning those licensees.

History. Acts 2007, No. 1595, § 1; 2019, No. 315, § 2607; 2019, No. 910, §§ 588, 589.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (b)(3)(A).

The 2019 amendment by No. 910 substituted "the staff of the State Securities Department or the staff of the Department of Commerce working for the State Securities Department" for "his or her staff" twice in (b)(2)(A); and, in (b)(3)(A), deleted "all" following "concerning", inserted "or employees of the Department of Commerce working for the State Securities Department", and substituted "State Securities Department" for "department" near the end.

23-55-609. Policy and procedure — Physical security and cybersecurity.

(a) A money transmitter or currency exchanger licensed or required to be licensed under this chapter shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information.

(b) A policy or procedure described in subsection (a) of this section shall be tailored to the size and sophistication of the money transmitter or currency exchanger.

(c) The Securities Commissioner may impose additional conditions by rule or order to clarify the requirements of a policy or procedure described in subsection (a) of this section.

History. Acts 2021, No. 532, § 20.

ARTICLE 7

Permissible Investments

23-55-701. Maintenance of permissible investments.

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles or international financial reporting standards of not less than the aggregate amount of all of its outstanding payment instruments and stored value and prepaid access obligations issued or sold in all states and money transmitted from all states by the licensee.

(b) A licensee transmitting virtual currency shall hold like-kind virtual currency of the same volume as that held by the licensee but which is obligated to consumers in lieu of the permissible investments required in subsection (a).

(c) A licensee conducting activities as described in subsections (a) and (b) shall maintain applicable levels and types of permissible investments as described in subsections (a) and (b).

(d) The commissioner, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The commissioner by rule may prescribe or by order allow other types of investments that the commissioner determines to have a safety substantially equivalent to other permissible investments.

(e) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored value and prepaid access obligations in the event of bankruptcy or receivership of the licensee.

History. Acts 2007, No. 1595, § 1; 2013, No. 531, § 8; 2019, No. 111, § 8; 2021, No. 532, § 21.

Amendments. The 2019 amendment inserted "or international financial reporting standards" in (a).

The 2021 amendment inserted (b) and (c) and redesignated former (b) and (c) as (d) and (e).

23-55-702. Types of permissible investments.

(a) Except to the extent otherwise limited by the commissioner pursuant to § 23-55-701, the following investments are permissible under § 23-55-701:

(1) cash;

(2) a bank receivable or credit card receivable;

(3) a savings deposit, a demand deposit, a certificate of deposit, or senior debt obligation of an insured depositary institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813 (1994 & Supp. V 1999);

(4) an investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the

United States; or an investment in an obligation of a State or a governmental subdivision, agency, or instrumentality thereof; and

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts that are less than seven days old.

(b) The following investments are permissible under § 23-55-701, if an investment does not exceed 30 percent of:

(1) a short-term investment that is not longer than six months bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(2) commercial paper; and

(3) an interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market.

(c) A savings deposit, a demand deposit, or a certificate of deposit at a foreign depository is permissible under § 23-55-701 if the investment does not exceed 10 percent.

(d) Any other investment is permissible under § 23-55-701 if the commissioner designates, to the extent specified by the commissioner.

(e) The aggregate of investments under subsections (b)-(d) may not exceed 50 percent of the total permissible investments of a licensee calculated in accordance with § 23-55-701.

History. Acts 2007, No. 1595, § 1; 2021, No. 532, § 22.

Amendments. The 2021 amendment rewrote the section.

RESEARCH REFERENCES

Ark. L. Rev. Carol R. Goforth, The Case for Preempting State Money Transmission Laws for Crypto-Based Businesses, 73 Ark. L. Rev. 301 (2020).

ARTICLE 10

Miscellaneous Provisions

23-55-1005. [Repealed.]

Publisher's Notes. This section, concerning savings and transitional provisions, was repealed by Acts 2019, No. 111, § 9, effective July 24, 2019. The section was derived from Acts 2007, No. 1595, §§ 1, 2.

23-55-1006. License terms.

Effective January 1, 2012:

(1) a license for a money transmission issued or renewed under this chapter shall expire on December 31 of each year unless it is terminated

by surrender, abandonment, a change of employment, or order of the commissioner; and

(2) a license for a currency exchange issued or renewed under this chapter shall expire on December 31 every 2 years unless it is terminated by surrender, abandonment, a change of employment, or order of the commissioner.

History. Acts 2011, No. 733, § 15; 2013, No. 531, § 9.

23-55-1007. Multistate automated licensing system.

(a) The Securities Commissioner may:

(1) Enter into an arrangement, agreement, or other working relationship with federal, state, or self-regulatory authorities, the Conference of State Bank Supervisors, or a subsidiary entity owned by the Conference of State Bank Supervisors to file and maintain documents in a multistate automated licensing system or other central depository system;

(2) Waive or modify in whole or in part by rule or by order any requirement of this chapter if necessary to implement this section; and

(3) Establish new requirements under this chapter to carry out the purpose of this section.

(b) It is the intent of this section that the commissioner be provided the authority to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with other states and federal authorities.

(c)(1) The commissioner may permit or require initial and renewal registration filings required under this chapter to be filed with the Conference of State Bank Supervisors, a subsidiary entity owned by the Conference of State Bank Supervisors, the Financial Industry Regulatory Authority, or another entity maintaining or operating a multistate automated licensing system.

(2) The applicant or the licensee shall pay any fee charged for the applicant or the licensee to participate in the automated licensing system.

(d) The commissioner may accept uniform procedures and forms designed to:

(1) Implement a multistate automated licensing system;

(2) Implement a uniform national regulatory system; or

(3) Facilitate common practices and procedures among the states.

History. Acts 2017, No. 620, § 6.